Unified Family Court Task Force

REPORT AND RECOMMENDATIONS

Alberta
GOVERNMENT OF ALBERTA

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LEGISLATIVE ASSEMBLY
ALBERTA

THE UNIFIED FAMILY COURT TASK FORCE

December 29, 2000

The Honourable Dave Hancock, Q.C.
Minister of Justice and Attorney General
Room 320, Legislature Building
10800 - 97 Avenue
Edmonton, Alberta
T5K 2B6

Dear Mr. Hancock:

RE: UNIFIED FAMILY COURT TASK FORCE REPORT

I am pleased to submit the Report of the Alberta Unified Family Court Task Force.

In the course of arriving at our recommendations, we conducted public consultation meetings in Alberta, held technical consultation meetings with Alberta lawyers, and met with lawyers, officials and judges from Saskatchewan, Manitoba, Ontario, Nova Scotia, New Brunswick and Newfoundland. We also received written input of nearly 500 completed questionnaires and written submissions.

We were impressed by the quality of the input provided to us and the commitment to improving the justice system of those who participated in the consultation. The consultation disclosed that there are definite areas of concern with the existing court system in the family law area. At the same time there are good features that should be maintained and built upon. Overall, there was strong support for a unified family court.

The Task Force is of the view that implementation of a properly resourced unified family court with enhanced services and geographic accessibility would be of major benefit to Albertans. Family law disputes can have a devastating long-term impact, not only on the parties to the dispute but also their children. Implementation of the recommendations in our report will do much to improve the process for resolving family law disputes in Alberta and reduce the harmful effects of such disputes on Albertans.

Respectfully submitted,

Marlene Graham

Marlene Graham, Q.C., Chair
Unified Family Court Task Force
MLA Calgary-Lougheed

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Newfoundland

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Ontario

The Honourable Justice D. Steinberg, Senior Justice, Unified Family Court, Ontario Court of Justice; The Honourable Justice D. Aston, Unified Family Court, Ontario Court of Justice; Stephen Rotstein; Risa Sheriff

Manitoba

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Saskatchewan

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We would like to thank the many individuals and organizations who participated in person at our consultation meetings. We would also like to acknowledge the following participating organizations that provided information and submissions to the Task Force during the consultation process. We have made every effort to accurately reflect all those that participated, and apologize to those who we may have inadvertently missed. Due to the *Freedom of Information and Protection of Privacy Act*, we are unable to list the names of individuals. However, we are grateful for their contributions as well.

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Advani Law Office
Alberta Association of Sexual Assault Centres
Alberta Children's Services
Alberta College of Social Workers
Alberta Justice
Alberta Human Resources and Employment
Awo-Taan Calgary Native Women's Shelter
Barry Elgert Kraus & Peddie
Birkett Ticoll Peterson
Bubel Boll and Sorenson
Burgess & Gurevtich
Butler, Kazakoff and Whitburn
Calgary Board of Education
Calgary Centre for the Prevention of Family Violence
Calgary Justice Working Project
Calgary Police Service
Canadian Bar Association
Canadian Grandparent's Rights Association
Canmore Legal Services
Catholic Social Services
Catholic Women's League
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Crown Prosecutors Office
Davidson & Williams
Delburne Neighbourhood Place
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Duncan and Craig
Edmonton Group of 18 Senior Family Law Lawyers
Edmonton Support Society for Abused Women
Edmonton Police Service
Edney Hattersley & Dolphin
Engel & Company
Equitable Child Maintenance and Access Society (E.C.M.A.S.)
Evan and Company
Evans Law Offices
Family & Community Support Services
Family Mediation Services
Family of Men Support Society
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Noble, Johnston and Associates
North & Company
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Partners for Kids and Youth
Pincher Creek Emergency Women's Shelter
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Psychologist's Association
R.C.M.P. Detachments
R.C.M.P. Victim's Services Centres
Red Deer Native Friendship Centre
Safe Home
S.A.I.F. Society
Scott Hall
Shapiro & Co.
Sik-Ooh-Kotoki Friendship Society
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Spier Harben
Stewart and Stewart
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WINGS of Providence
Young Offender Centres
YWCA

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PART 1 SUMMARY OF REPORT

Executive Summary

Terms of Reference of the Unified Family Court Task Force

This document is the Report of the Unified Family Court Task Force which was established by the Minister of Justice and Attorney General ("the Minister") to consider how access to the courts could be improved for family-law litigants, including the preparation of recommendations concerning:

- appropriate court structures for family law, including elimination of unnecessary overlap and duplication
- increased accessibility for unrepresented litigants
- simplification of the court process
- the use of mediation and other dispute resolution processes
- services to be provided in conjunction with the courts to assist family-law litigants and minimize adverse consequences of the litigation on the parties and the children
- the appropriate forum to decide young offender and child welfare matters.

The establishment of the Task Force flows from a number of suggestions made by various official bodies in the last few years, including the 1998 MLA Review of the Maintenance Enforcement Program and Child Access, the Alberta Summit on Justice and the All-Party MLA Public Consultation Committee for the Alberta Summit on Justice, and the Legislature itself. These in turn flow from the desire of Albertans generally to see that family relationships are preserved when that is possible and that, where preservation is not possible, the damage from the breakdown should be minimized as much as possible and the consequences managed as well as possible. Above all, they want the children to be protected.

Existing family-law court system

Both the Court of Queen's Bench of Alberta and the Provincial Court of Alberta have jurisdiction in family-law matters. All judges of the Queen's Bench deal with family law. The Provincial Court's jurisdiction is exercised in Calgary and in the Edmonton area by the specialized Family and Youth Division, and elsewhere in the province by the Provincial Court as a whole. The Queen's Bench sits in 13 major centres in Alberta. The Provincial Court sits in 75 centres.

In some areas of law that affect families, one court has exclusive jurisdiction. For example, the Queen's Bench has exclusive jurisdiction in divorce and the division of matrimonial property, while the Provincial Court has exclusive jurisdiction over young offenders and child welfare matters. In other legal areas, the jurisdictions of the two courts overlap. For example, both courts deal with spousal and child support and child custody and access.

One result of the division of jurisdictions between the two courts is that there are cases in which no one court can deal with all the legal problems arising from the breakdown of a marriage or family relationship. As a result, piecemeal solutions have to be provided, and it is possible for conflicting orders to be made. There are also cases in which proceedings start in one court and then have to be re-started in another court. Because of the existence of the two courts, court services to family-law litigants and their families are fragmented.

Recommended court structure and procedures

In the Task Force's view, the family court system should be based on the following principles and policies:

- application of law while minimizing damage to individuals
- encouragement of alternative means of dispute resolution
- geographic accessibility
- economic and procedural accessibility, including
  - adoption of efficient court structures and simplified court procedures
  - provision of court services for the assistance of family-law litigants.

The Task Force accordingly recommends that a single court should be established in Alberta to exercise all family-law jurisdictions and powers and to provide essential services to people involved in family-law disputes. We will refer to that single court as a "unified family court."

The judges of the unified family court will have to be appointed by the Federal Government under sec. 96 of the *Constitution Act* 1867 in order that they may exercise jurisdiction over divorce and nullity of marriage, division of matrimonial property, and in order that they may have the power to make restraining orders other than short-term emergency orders.

The majority of the Task Force are of the view that making the unified family court a division of the Queen's Bench would:

- be a suitable way to enable the unified family court to achieve its objectives
- provide flexibility in the deployment of judges
- avoid constitutionally awkward arrangements, particularly with respect to the chief judge or chief justice of the court
- adopt an established model which has been accepted by the Federal Government in other provinces.

The Task Force accordingly recommends as follows:

- the unified family court should be a new Family Division of the Court of Queen's Bench.
- the judges of the unified family court should be federally appointed and should be specially qualified to deal with family-law matters.

- the judges of the unified family court should spend the substantial majority of their time in the unified family court, but should be able to sit in the general division of the Queen's Bench.
- the bulk of the judicial work of the unified family court should be done by judges appointed to the Family Division.

The Task Force regards the adoption of simpler and less formal procedures and practices as one of the principal objectives of the establishment of a unified family court. This will help family-law litigants who have lawyers. It will give even more help to family-law litigants who are not represented by lawyers. Everyone who goes to the unified family court should understand the process and should have an opportunity to give oral evidence where appropriate. They should feel that they have been given a fair hearing. Procedures and practices should be designed to minimize cost and the number of court proceedings, and they should be flexible enough to accommodate the needs of different participants in family-law litigation. Although the courts have in recent years made progress in reducing complexity and formality in court procedures and practices in family law, much remains to be done.

The Task Force accordingly recommends to the Minister that steps be taken to design rules of procedure and practice that will achieve the objectives of the unified family court, with input from the bench, the bar and other providers of services in the family-law system. Rules of procedure should be consistently applied throughout the province.

Jurisdiction of the unified family court

The unified family court should have all the jurisdictions and powers necessary to deal with all aspects of a family's problems in the one forum. Accordingly, it should have exclusive jurisdiction over what is usually considered to be family law, including marriage, divorce, nullity of marriage, judicial separation, division of matrimonial property, spousal and child support, and guardianship, adoption, custody and access of children. It should also have exclusive jurisdiction over protection and restraining orders, including orders under the *Protection Against Family Violence Act*. Problems in these areas arise because of the breakdown of family relationships. The effective resolution of disputes will benefit from a specialized judiciary and the services provided in conjunction with family-law courts.

The unified family court should also have exclusive jurisdiction over *Child Welfare Act* and *Protection of Children Involved in Prostitution Act* matters and over school attendance. The need for such orders customarily arises from the breakdown of the family relationships which normally protect children. The unified family court should also have concurrent power with the Provincial Court to make apprehension orders under sec. 10 of the *Mental Health Act*.

While some of the members of the Task Force think that it would be appropriate to designate the unified family court as the Youth Court to deal with charges under the *Young Offenders Act*, the majority are of the view that a decision on the question should be deferred for two years after the establishment of the unified family court.

Family-law services and court administration

Court-imposed solutions to family problems should be the last resort. Families should be given information so that they will understand how to minimize the effects of relationship breakdowns on children. They should also be given up-front advice and assistance to help them to arrive at their own solutions. If they cannot agree, they should be given information, advice and, where necessary, legal representation, to enable them to work their way through the court system.

Many court and court-associated services are already available to people who come to family-law courts. However, the services available vary from one court to another, and most services are not available in vast areas of the province.

The Task Force recommends that the following categories of services should be available to persons who come to the family-law courts:

- education of parents
- services relating to access to courts, including intake services and various kinds of information, advice, and assistance with documents, including self-help documents
- services facilitating access to children
- legal services
- alternative dispute resolution at initial stages and later in the process
- judicial education to improve understanding of dynamics affecting family-law problems
- the provision of judicial officers other than judges to give quicker and easier access for matters that do not have to be dealt with by judges.

The Task Force recommends that the unique position of children in family-law disputes should be recognized by the provision of courses or counselling for children and by the provision of legal assistance for children.

The Task Force also recommends that the unified family court should be staffed with personnel trained to facilitate the objectives of the unified family court.

Technological support

The Task Force considers it important that family-law and Youth Courts be provided with one computer system, or at least compatible computer systems, which will allow for the sharing of court information about individuals who are before the courts and which will also allow the courts to collect statistical information for use in planning court resources and operations. The unified family court should also be provided with video-hearing and video-conferencing capacity in order to reduce costs and travel time for litigants, their lawyers, judges and court staff.

Transition to the unified family court

It is imperative that the changeover to the unified family court be made in a planned and orderly manner so that litigants and their families will not suffer from inadequate organization or inadequate resources. With that in mind, the Task Force recommends that careful planning be undertaken for the implementation of the unified family court. A comprehensive and detailed business plan should then be prepared after consultation with a steering committee composed of members of the bench, both Queen's Bench and Provincial Court, the bar, other service providers and the public. The business plan should include a plan for the judicial and other resources needed for the court and a timed plan for the orderly implementation of the Task Force's proposals. An additional benefit of the preparation of a sound business plan is that it is likely to be of assistance in obtaining the cooperation of the Federal Government, particularly in the appointment of the necessary numbers of judges of the unified family court.

Availability of unified family court services in Alberta

The Task Force considers that all Albertans, wherever they live, have an equal entitlement to the services of the family-law courts, judicial and otherwise. Equal entitlement should be recognized as a guiding principle. Where it is not possible to make those services available equally in terms of time and distance, every effort should be made to make them as accessible as possible, and in any event accessible within a reasonable time and distance.

Conclusion

The establishment of a unified family court composed of specialized judges and including services for the assistance and education of parents and children, for alternative methods of resolving family disputes and for assistance in going through the court process will help Alberta families. It will enable many families to resolve their disputes with the least possible damage to parents and children.

However, the benefits of a unified family court will be realized, and its objectives achieved, only if the unified family court has adequate judicial, administrative, service, and financial resources. If the unified family court is not provided with adequate resources it should not be established. Further, regular reviews of the jurisdictions, practices, procedures and resources of the unified family court should be conducted to see that it continues to meet the needs of family-law litigants and their families.

LIST OF RECOMMENDATIONS

RECOMMENDATION NO. 1

The following policies and principles should apply to the family-law court system:

- **Application of law while minimizing damage to individuals**
  Family-law courts should decide disputes according to law, but, within legal requirements, should be sensitive to minimizing the damage to individuals caused by family-law disputes, and should be supported in doing so by judges familiar with family-law problems and by appropriate court services.
- **Encouragement of alternative means of dispute resolution**
  Persons with family-law problems should be encouraged to resolve them by means other than judicial decisions, and should be supported in so doing by the courts and services provided through the courts.
- **Geographic accessibility**
  The services of family-law courts, including both judicial and other services, should be available to all Albertans within a reasonable time and distance.
- **Economic and procedural accessibility**
  Economic and procedural barriers should be kept as low as possible by the adoption of efficient court structures and simplified court procedures and by the provision of court services for the assistance of family-law litigants.

RECOMMENDATION NO. 2

To give effect to the principles set out in Recommendation No. 1, a unified family court should be established in Alberta expeditiously:

- to exercise all family-law jurisdictions and powers
- to provide essential services to people involved in family-law disputes.

RECOMMENDATION NO. 3

The unified family court should be a division of the Court of Queen's Bench of Alberta.

RECOMMENDATION NO. 4

Regard should be given to the following criteria, among others, in the appointment of the judges of the unified family court:

- interest in family law and a desire to serve in the unified family court
- common sense, patience and problem-solving skills
- an understanding of human nature and motivations
- community involvement.

A special appointment process should be adopted. It should include:

- personal interviews with prospective appointees to the unified family court
- consultation with the Provincial Government.

The Provincial Government should endeavour to obtain the agreement of the Federal Government to these recommendations.

RECOMMENDATION NO. 5

The Family Division of the Queen's Bench should be composed of judges devoted to the administration of family law.

Unified family court judges should be specifically appointed to the Family Division of the Queen's Bench, but the judges of both the Family Division and the general division should be able to exercise all the jurisdictions and powers of both divisions.

The bulk of the judicial work of the Family Division should be done by judges appointed to the Family Division.

The legislation establishing the Family Division should provide that the judges of the Family Division will spend a substantial majority of their judicial time in the Family Division.

RECOMMENDATION NO. 6

The unified family court should have exclusive jurisdiction in the following areas of law:

- marriage (including capacity to marry and solemnization of marriage)
- divorce and nullity of marriage
- judicial separation
- spousal support
- division of matrimonial property
- support, custody of and access to children
- enforcement of support, custody and access orders
- guardianship of children (personal)
- guardianship of children (property)
- adoption of children
- parentage of children
- child welfare
- protection and restraining orders, including orders under the *Protection Against Family Violence Act*
- protection of children under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act*
- school attendance.

The Family Division should have concurrent jurisdiction with the Provincial Court to issue warrants for detention and examination under sec. 10 of the *Mental Health Act*.

RECOMMENDATION NO. 7

The Task Force recommends that:

- young offenders should not be included in the jurisdiction of the unified family court at this time.
- the question of including young offenders in the jurisdiction of the unified family court should be reviewed no later than two years after the establishment of the unified family court, and a decision should be made in the light of circumstances at the time of the review.
- in the meantime,
  - services such as those recommended for the unified family court should be made available to young offenders where they are relevant to the situation of young offenders.
  - provision should be made for the sharing of information between the Youth Court and the unified family court to enable both the Youth Court and the unified family court to be aware of proceedings regarding common problems where such sharing is appropriate.

RECOMMENDATION NO. 8

The following areas of law should not be included in the jurisdiction of the unified family court:

- family violence (adult criminal charges)
- dependent adults
- wills and estates
- family relief.

RECOMMENDATION NO. 9

Simplifying and reducing the formality of court practices and procedures should be a principal objective of the unified family court.

The unified family court's practices and procedures should:

- be unique to the unified family court and should not vary from place to place
- ensure timely access to the court and timely resolution of disputes
- enable everyone who appears before the court to give oral evidence where appropriate and to feel that they have had a fair hearing
- minimize cost and avoid unnecessary numbers of court proceedings
- be flexible enough to accommodate the needs of different participants in family-law litigation, including unrepresented litigants.

The Task Force recommends to the Minister that steps be taken to design rules of procedure and practice that will achieve the objectives of the unified family court, with the benefit of input from the bench, including the Queen's Bench and the Provincial Court, the bar, and other providers of services in the family-law system.

RECOMMENDATION NO. 10

The unified family court should:

- be adequately staffed with personnel trained to facilitate the objectives of the unified family court.
- have one official who is responsible for the administration of the court throughout the province.
- share court facilities in centres where people have access to justice generally.

The unified family court should be headed by an Associate Chief Justice of the Family Division.

RECOMMENDATION NO. 11

Family-law and youth courts should be provided with one computer system, or compatible computer systems, that will:

- allow the sharing of information about individuals involved in family-law or young offenders matters before the courts.
- allow the courts to collect common statistical information for use in the planning of court resources and operations.

The legislation should be reviewed to ensure that relevant information can be shared by the courts where appropriate.

RECOMMENDATION NO. 12

The unified family court should have video-hearing and video-conferencing capability to reduce costs and travel time for litigants, their lawyers, judges and court staff.

RECOMMENDATION NO. 13

The following categories of services should be available as early as possible to persons who come to family-law courts:

1. **Education of parents**
   - courses of instruction to parents for working out custody and access matters in an amicable manner, such as the existing Parenting After Separation and Communication in Conflict courses, should be continued and made more generally available
   - courses for parents in high conflict situations.
2. **Services relating to access to courts**
   - one-stop administrative centres which will provide information about the court and procedures, assistance with documents, and plain-language self-help materials and forms, and will guide litigants through court procedures
   - native counselling services
   - court-generated orders
   - interpreter services

- judicial officers other than judges, who would be able to deal with matters that do not have to be dealt with by judges, thus providing for quicker and easier access to the courts when required.

3. **Special services for the benefit of children**
   - courses or counselling for children involved in the breakdown of family relationships
   - legal counsel for children involved in family breakdown
   - services to deal quickly with allegations of abuse and alienation in situations of breakdown of parental relations.
4. **Services that facilitate access to children**
   - access supervision
   - access exchange facilities.
5. **Assistance for the court**
   - custody and access reports.
6. **Legal services**
   - expanded access to legal aid for litigants
   - duty counsel.
7. **Alternative dispute resolution**
   - mediation services
   - case management and judicial dispute resolution.
8. **Judicial education**

   This should include courses for judges about the effects of such things as:
   - cultural diversity, social context education
   - mental health
   - substance abuse
   - dynamics of family violence
   - health issues, such as fetal alcohol syndrome.

RECOMMENDATION NO. 14

The reform of family law should be pursued vigorously and carried to as early a completion as possible.

RECOMMENDATION NO. 15

It is imperative that the changeover to the unified family court be made in a planned and orderly manner so that family-law litigants and their families will not suffer from inadequate court organization or inadequate resources.

We urge the Minister to ensure that careful planning is undertaken for the implementation of the unified family court. At the appropriate stage a comprehensive and detailed business plan should be prepared after consultation with a steering

committee composed of members of the bench, both Queen's Bench and Provincial Court, the bar, other service providers and the public, which could assist in the implementation process.

The business plan:

- should include a plan for the judicial and other resources required and should provide a timed plan for the orderly implementation of the Task Force's proposals, whether in a staged progression or as one operation.
- should be designed to achieve the goal of establishing a unified family court which will serve the whole province.

RECOMMENDATION NO. 16

The Provincial Government should not establish a unified family court unless:

- the Provincial Government is prepared to commit to the unified family court the financial and administrative resources,
- and unless the Federal Government is prepared to commit the necessary judicial resources,

which are necessary in order to enable the unified family court to do an effective job for Albertans who have family-law problems.

RECOMMENDATION NO. 17

Regular reviews of the jurisdictions, practices, procedures and resources of the unified family court should be carried out to see that the court continues to meet the needs of family-law litigants and their families.

PART 2 REPORT AND RECOMMENDATIONS

INTRODUCTION

The special nature of family-law problems

Family law affects great numbers of Albertans who have little or no other contact with the legal system. Family problems can, and often do, have profound effects on many aspects of the lives of those involved. They also have a great effect on public services and institutions, including the health care system, the educational system, social services and the criminal justice system. The cost of family problems to individuals and to society is enormous. It is in the interest of individuals and society to find better ways of dealing with family problems.

Albertans want family relationships preserved where that is possible. Where a family relationship breaks down irretrievably, they want the damage caused by the breakdown to be minimized. Where ongoing relationships are necessary following breakdown, as in the custody of children and in the payment of spousal and child support, they want these relationships to be managed so as to cause as little stress and bitterness as individual cases permit. Above all, they want the children protected. They recognize that our society has a profound interest in the achievement of these goals.

Family relationships and their breakdown involve legal rights and responsibilities. Divorce, the division of property, the support of spouses, guardianship and the care of children, for example, involve legal rights and responsibilities. Society looks to courts of law to see that legal rights and responsibilities are respected in family relationships as well as in other relationships.

Our court system is designed to hear and resolve disputes between individuals, corporations and governments and to determine whether crimes are committed. One side to a criminal or civil dispute puts forward a claim, and the other rejects it or puts forward claims of its own. Each side puts forward evidence and argument and tries to defeat the evidence and argument put forward by the other side. Customarily, one side wins and the other side loses. The two sides are adversaries, and the system is an "adversarial" system. Elaborate systems have been worked out to ensure fairness between the parties.

But these traditional court approaches to identifying and enforcing legal rights and responsibilities are not effective in many family-law situations. Formal and complex procedures do not yield optimum solutions to many family problems. Court-imposed solutions to many family-law problems will be effective only if they are sensitive to the nature of family relationships and to the needs of those involved. The optimum resolution of family-law problems therefore requires courts with special characteristics.

Court-imposed solutions to family problems should be the last resort. Families should be given information so that they will understand how to minimize the effects of relationship breakdowns on children. They should also be given up-front advice and

assistance to help them to arrive at their own solutions. If they cannot agree, they should be given information, advice and, where necessary, legal representation, to enable them to work their way through the court system.

Some family law disputes have to be decided on an adversarial basis. If one spouse claims a divorce and the other spouse rejects it, the court has to decide which spouse wins. If both spouses claim custody of children, the situation is more complex, but if no agreement can be reached, the court has to decide whether either or both spouses will have custody, who will have the residential care of the children, and whether and to what extent a non-custodial spouse will be entitled to have access to the children. If the spouses cannot agree on how to divide their matrimonial property, the court must decide how it is to be distributed. If a Director of Child Welfare says, over the objections of parents, that a child is in need of protection, the court must decide what is to be done.

But family-law disputes tend to be different from other kinds of disputes, because they involve intimate human relationships and the effects of the breakdown of those relationships. This affects the two persons who are married to each other or who live together or have had a child together and will also affect the children of either or both of those two persons. Although family relations are governed by law, and although there has to be an ultimate dispute-resolution system through the courts, it is very much in society's interest, as well as in the interest of those affected by the breakdown of family relationships, that special efforts be made to resolve disputes, both through special court structures and procedures and through the provision of special services associated with the courts.

The special needs and characteristics of family-law problems have long been recognized in Alberta. The Court of Queen's Bench has adopted special processes to deal with the family law matters that fall within that court's jurisdiction. A special Family and Youth Division of the Provincial Court deals with family law matters within that court's jurisdiction. Special family services are made available through the two courts.

However, the division of family-law responsibilities between the two courts gives rise to problems. So does the lack of comprehensive family-law services. This Task Force has been established to consider how access to the courts could be improved for family-law litigants. Its terms of reference require it to make recommendations both about the structure and composition of family-law courts and about the services that should be made available to family-law litigants.

Establishment and work of the Task Force

Establishment

The Unified Family Court Task Force was established by the Honourable Dave Hancock, Minister of Justice and Attorney General, on March 17, 2000. The members are Marlene Graham, Q.C., Chair, (MLA Calgary - Lougheed); Michael Benson; Assistant Chief Judge Janet Franklin; Albert Klapstein (MLA Leduc); Hung Pham (MLA Calgary - Montrose); Rhonda Ruston, Q.C.; and Justice Marguerite Trussler.

A number of recent Alberta events led up to the establishment of the Task Force:

1. In June 1998, the MLA Review of the Maintenance Enforcement Program and Child Access found that confusion and delay exists because there are too many statutes that deal with family law and because two different courts are dealing with the same matters. The Committee thought that the ideal system would have one forum for the resolution of family law disputes, which would have flexible procedures and evidence requirements that would make it accessible to persons without lawyers throughout the province.
2. In November 1998, the All-Party MLA Public Consultation Committee for the Alberta Summit on Justice also reported that too many statutes and different courts make the family law system confusing. Suggestions included the creation of a single court level for family law matters, and putting all family law legislation into one statute. It said that the Court of Queen's Bench is not as accessible to rural Albertans as the Provincial Court and that, because of more complex procedural rules, it is also difficult to access without the assistance of a lawyer.
3. On March 23, 1999, the Legislature passed a unanimous resolution asking the Government to examine the establishment of a unified family court or other similar structure in an effort to provide a more efficient and accessible way to deal with problems arising from family breakdowns.
4. In April 1999 the Final Report of the Alberta Summit on Justice made a number of recommendations for consolidating laws and courts so that jurisdictions are simpler; simplifying court procedures; simplifying court language, and generally making court procedures more user-friendly.
5. In May 1999 the Government's Response to the Final Report of the Alberta Summit on Justice said that a single family law forum to deal with family matters will be explored in consultation with the judiciary and other stakeholders, and that the forum could include access to alternative dispute resolution processes as well as to the courts.

The idea of a single family-law forum has been around for a long time. In 1977, the Law Reform Commission of Canada recommended the establishment of unified family courts in Canada, and in 1978 the Alberta Law Reform Institute did the same for Alberta. The idea has been fostered by the Federal Government over the years, and seven provinces have established unified family courts which cover at least part of their provinces and much of family law. In December 1998, the Special Joint Committee of the Senate and the House of Commons on Child Custody and Access recommended that the Federal Government continue to work with the provinces and territories to accelerate the establishment of unified family courts in every judicial district across Canada, with a broad range of non-litigation services.

These various reports and recommendations have been based on public concerns about family-law courts. The Task Force was appointed to pursue the questions raised by them. Its basic function is to make recommendations to the Government for simplifying court structures and procedures in family law matters and enhancing court services to families who become involved in disputes.

Research and consultation

The Task Force has obtained a great deal of information about the structures of courts that administer family law in Alberta, elsewhere in Canada, in the United States, the United Kingdom and Australia and New Zealand, and about experience with those court structures. Task Force members and staff have had extensive discussions with judges, lawyers and court staff in other provinces. The Task Force has also obtained considerable information about court services in all of those places.

In addition, the Task Force has undertaken extensive consultation with the Alberta public as well as those involved in the family-law system. We have:

- distributed a consultation paper widely to interested groups and individuals in order to obtain public input. The consultation paper was made available at courthouses in Alberta and through MLA offices, the Internet and Alberta Justice.
- held public meetings in Edmonton, Calgary, Lethbridge, Wetaskiwin, High Prairie, and St. Paul. Notice of the consultation paper and the public meetings was given in Alberta newspapers and on the Internet.
- held technical meetings with lawyers from Edmonton, Calgary, Red Deer, Lethbridge, Medicine Hat, Grande Prairie and Lloydminster.

A report of the written consultation has been prepared by Howard Research and Instructional Systems Inc. The main body of the report is reproduced in Appendix A to this report, and readers who wish to ascertain the methodology followed and the specific findings observed in the consultation should read the Appendix. Our consultation found much dissatisfaction with the current system of family law both at the Queen's Bench and Provincial Court levels, though many positive elements of the current system were noted, mediation being the one most frequently reported. There was overall strong support for the concept of a unified family court. The majority of those who responded thought that the unified family court should be a separate court, though a majority of lawyers preferred a division of the Queen's Bench. Most thought that the unified family court should have a broad jurisdiction covering a variety of family-related matters, but not including such things as young offenders, family violence, dependent adults and mental health. Most thought that support services, both legal and social, should be a major component of a unified family court.

As well, the Task Force has consulted widely with judges, lawyers and officials in other provinces which have established unified family courts, personally and by telephone and video conference.

The Task Force has given close attention to the information and advice received from all these sources and our deliberations have been much influenced by it. In particular, we believe that the recommendations that we will make in this report will address the concerns of the Alberta public as well as those involved in the family-law justice system.

General conclusions

We will here state our general conclusions. The family-law system should be based on the following:

- one court to deal with all family-law problems
- simplified court procedures
- specialized judges
- a wide range of services
- accessibility to all Albertans within a reasonable time and distance.

The Task Force considers that all Albertans, wherever they live, have an equal entitlement to the services of the family-law court, judicial and otherwise. This should be recognized as a guiding principle. Where it is not possible to make those services equally available in terms of time and distance, every effort should be made to make them as accessible as possible, and in any event accessible within a reasonable time and distance, and creative and innovative measures should be adopted to give full effect to this guiding principle.

EXISTING COURT STRUCTURES, SERVICES AND PROCEDURES FOR FAMILY LAW

The Queen's Bench and the Provincial Court

At present, two courts administer family law. One is the Court of Queen's Bench of Alberta. The other is the Provincial Court of Alberta. The Family and Youth Division of the Provincial Court exercises the Provincial Court's family-law jurisdictions in Edmonton and Calgary, while judges of the Provincial Court as a whole do so in the rest of the province.

Both the Queen's Bench and the Provincial Court are created by provincial statutes. Because the Queen's Bench is characterized as a superior court, that is, a court of general trial jurisdiction with a number of inherent powers, its judges are appointed by the Governor General on the advice of the Federal Cabinet. The judges of the Provincial Court are appointed by the Lieutenant Governor in Council on the advice of the Provincial Cabinet.

Division of family-law jurisdictions and powers

The division of family-law jurisdictions and powers between the Queen's Bench and the Provincial Court is complex. In some cases, both courts have jurisdiction over the same matter. In others, one court has jurisdiction over one piece of a family relationship and the other court has jurisdiction over another piece. The reasons for the division are founded on history, on the division of legislative powers between the Province and the Federal Government, and on sec. 96 of the *Constitution Act* 1867, which says that the judges of the "superior, district and county courts" in the provinces must be appointed by the Governor General, that is, the judges of "superior, district and county courts" must be federally appointed.

The division of jurisdictions and powers between the two courts in the principal areas of family law is as follows:

1. **Divorce, nullity of marriage and judicial separation**
   The Queen's Bench has exclusive jurisdiction in divorce, nullity and judicial separation.

2. **Spousal and child support**
   The Queen's Bench has exclusive jurisdiction over spousal and child support in connection with a divorce, nullity or judicial separation. Both courts have jurisdiction where divorce, nullity and judicial separation are not involved. Queen's Bench and Provincial Court orders filed with the Director of Maintenance Enforcement under the *Maintenance Enforcement Act* are enforced through the Queen's Bench, and the Queen's Bench, but not the Provincial Court, can vary such orders. The Provincial Court still has a power to enforce, but not vary, Queen's Bench maintenance orders, though this power is not often used.

3. **Child custody and access**
   The Queen's Bench has exclusive jurisdiction over child custody and access in connection with a divorce, nullity or judicial separation. Both courts have jurisdiction where divorce, nullity and judicial separation are not involved.

4. **Child parentage and guardianship**
   The Queen's Bench and the Provincial Court have overlapping jurisdictions in guardianship (*Child Welfare Act*, Part 5; *Domestic Relations Act*, Part 7). The Queen's Bench determines parentage (*Domestic Relations Act*, Part 8; *Parentage and Maintenance Act*). Only the Queen's Bench has the inherent *parens patriae* powers, which enables the court to take some steps for the protection of children without specific legal authority.

5. **Division of matrimonial property**
   The Queen's Bench has exclusive jurisdiction over the division of matrimonial property on marriage breakdown or divorce.

6. **Family violence**
   The Provincial Court and some justices of the peace have power to issue emergency protection orders in cases of family violence, subject to automatic review by the Queen's Bench. The Queen's Bench has overall jurisdiction over protection and restraining orders. If criminal charges are involved, the Provincial Court has extensive jurisdiction under the *Criminal Code*, with jurisdiction over some of the most serious offences reserved to the Queen's Bench.

7. **Child welfare**
   The Provincial Court has exclusive jurisdiction over the protection of children through the *Child Welfare Act*.

8. **Young offenders**
   The Provincial Court has exclusive jurisdiction over young offenders, subject to possible transfer to adult criminal courts, which may be either the Provincial Court or the Queen's Bench.

How judicial services are provided in family law

The Queen's Bench holds sittings, either through resident judges or circuit judges, in 13 centres in Alberta[1]. The Provincial Court holds sittings in 75 centres. In Calgary and Edmonton, and in centres within 100 kilometers of Edmonton, the Family and Youth Division does almost all of the Provincial Court's family-law work, including the *Young Offenders Act*. Judges of the Provincial Court in general do the family and youth work elsewhere in the province. Two judges of the Family and Youth Division are on call by pager at all times to facilitate the protection of children and to give emergency orders in matters under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act*.

In both the Queen's Bench and the Provincial Court, the commitment of judicial time to family-law matters is huge. Statistics prepared by Alberta Justice, which are based on the number of sitting days that the judges in the two courts spend on family-law matters in comparison with the number of sitting days that they spend on other matters, suggest that the time of the equivalent of 34 full-time judges is spent on family-law matters in Alberta, exclusive of *Young Offenders Act* matters, and that the time of the equivalent of an additional 12 full-time judges is spent on young offenders matters.

Services provided to families through the family-law courts

Services provided in Alberta

The staff in both the Court of Queen's Bench and the Provincial Court assist members of the public by directing them to the court which is appropriate for their problems and by referring them to the appropriate court forms. This assistance is of great help to people with family-law problems. This is not a formal service or a formal responsibility of the staff.

Support services have been developed to guide family-law litigants through the court system; to help them to resolve their own disputes; to provide necessary information and expert advice for the judges who deal with family-law problems; to provide legal representation for family-law litigants and children involved; and to enforce orders for the payment of support. These are not uniformly available to both the Queen's Bench and the Provincial Court, nor are they uniformly available throughout Alberta.

A summary of the available support services is as follows:

1. **Education of parents.**
   - ***Parenting after separation***. A six-hour seminar delivered by contracted agencies is provided to parents to teach them about the impact of divorce on their children and sensitize them to the reaction of children to parental behaviour. The seminar is mandatory for parties involved in Queen's Bench actions where custody, access or support for a child under 16 years is involved, and it is recommended for Family Court applicants. In 1998/99, the seminar was delivered in Edmonton, Calgary, Lethbridge, Red Deer, Medicine Hat, Grande Prairie, Fort McMurray, Peace River and Bonnyville, with varying

[1] Calgary, Drumheller, Edmonton, Fort McMurray, Grande Prairie, Hinton, High Level, Lethbridge, Medicine Hat, Peace River, Red Deer, St. Paul, and Wetaskiwin.

frequency. The seminar is also available on video at other locations through Children's Services offices.

- ***Communication in conflict***. This is a further workshop to help parents going through separation or divorce to talk to each other. It is available through the Queen's Bench and the Provincial Court in Edmonton.

2. **Information, guidance and assistance to family-law litigants.**
   - ***Family Law Information Centres***. These were formerly called Child Support Centres. In Edmonton and Calgary only, these centres provide information and guidance to Queen's Bench family-law litigants, with fax and telephone access from other centres. The centres have developed over 25 plain language court procedures booklets giving unrepresented parties information about making applications in the Queen's Bench. The most commonly used of these are available at all Queen's Bench locations. All are available on the Court of Queen's Bench and Alberta Justice websites.
   - ***Family Court services***. In Edmonton and Calgary, counsellors provide help in identifying issues, exploring options and seeking the most appropriate option in custody, access and guardianship applications in Provincial Court (Family Division). They will assist in preparing documents and will guide litigants through the court process. Some assistance is given in some other centres, but it is not consistently available.
   - ***Family Maintenance Program***. This program assists in locating parents, obtaining support agreements, and preparing and (where the person caring for the child is in receipt of social assistance) making court applications. It applies to children whose parents are not married to each other or who are separated or divorced (where the divorce has not dealt with maintenance). It is provided through 26 district offices of Alberta Human Resources and Employment.

3. **Alternative dispute resolution.**
   - ***Mediation services***. Mediation services are provided to both Queen's Bench and Provincial Court (Family Division) family-law litigants in Edmonton and Calgary, through both provincially-employed and contract mediators. Outside of Edmonton and Calgary, the service is available through contract mediators. One litigant must have an income of less than $40,000, and there must be a child under 18 years involved. A pilot project has been initiated in the Provincial Court at Edmonton and Calgary to mediate child welfare issues.
   - ***Case management and judicial dispute resolution***. Case management, settlement conferences and judicial mini-trials are available in the Queen's Bench. Case management and settlement conferences are also available in the Provincial Court in Edmonton, Calgary and Lethbridge. Pre-trial conferences are scheduled in the Provincial Court at Edmonton and Calgary for all child welfare and some private family matters.

4. **Information and expert advice for the judges.**
   - Open assessments by psychologists at the expense of the parties are ordered by the Queen's Bench in Edmonton, Calgary and throughout the province to obtain information and recommendations for custody and access decisions. The parties are equally responsible for the cost, though a means-tested subsidy is available.

- In cases where complete assessment is not necessary, a recent Queen's Bench Practice Note provides for assistance to parties to solve problems through the use of parental conflict intervention.
- Assessments by court counsellors have been directed by the Provincial Court (Family Division) in Edmonton.

5. **Legal aid.**
   - The Legal Aid program extends to eligible litigants in family law matters in Queen's Bench and Provincial Court, though the eligibility guidelines differ.
   - The Calgary Legal Guidance clinic provides free legal advice to people who cannot afford to pay a lawyer but do not qualify for Legal Aid.
   - Also in Calgary, the Court Preparation Program assists victims of domestic assaults including legal information and assistance, restraining orders, counselling and support and advocacy and referrals, and providing duty counsel for reviews of emergency protection orders in the Queen's Bench.
   - In Edmonton, the Protection and Restraining Order Project provides a staff lawyer in the Queen's Bench to provide legal assistance to low income persons and their children where actual or threatened abuse and harm occurs.

6. **Native Counselling Services.**

   This is a program for aboriginal people which provides interpretive help, assistance, advice and counselling to persons regarding the facilities, programs and resources available in the community. Native Counselling Services are most commonly available in Provincial Court. Family court workers attend at court with clients.

In addition, the Maintenance Enforcement Program, which is not associated with either of the courts, collects payments due under spousal and child support orders.

Services provided through unified family courts in other provinces

Unified family courts in Manitoba, Newfoundland, Ontario, New Brunswick, Nova Scotia and Saskatchewan provide services as follows:

1. **Intake services**
   Some or all of the following intake services are available in most provinces:
   - document checking
   - assistance with document completion
   - referral to mediation or case management or to various community services.

2. **Assistance with court process**
   Some provinces (Nova Scotia, Newfoundland and Saskatchewan) provide some assistance with court process.

3. **Mediation services**
   Mediation services are provided in all of those provinces. These are usually for custody, access and support matters. They are sometimes provided by staff mediators and sometimes by outside service providers, and they are sometimes provided without cost and sometimes on the basis of partial or entire payment.

Mediation is generally voluntary, though some unified family court judges require mediation before court proceedings unless a particular matter has been screened out as not suitable for mediation.

4. **Information brochures**
Ontario has developed a brochure on Family Court; information brochures for children whose parents separate or divorce; and guides to procedures. Manitoba has a brochure which provides an overview of the law and court procedures, and a law information call-in service is also available. Saskatchewan has information kits that are available for $25, providing plain language instruction and forms.

5. **Information for parents**
Newfoundland, Nova Scotia, Manitoba and Saskatchewan provide fairly extensive seminars, and Ontario provides a shorter seminar which covers information on separation, divorce and community resources as well as the impact on children.

6. **Legal services**
The legal services provided are variable in scope, in eligibility criteria, and in mode of provision, that is, by staff or private lawyers. In some cases, advice or duty counsel are present at the court offices or in court. Some form of duty counsel is common in child welfare matters.

7. **Supervised access and transfer**
Newfoundland provides supervised access at court houses, which has to be paid for except for the first hour each week. Manitoba provides off-site supervision by a community agency with a waivable $5 per hour fee. Ontario also provides supervised access through external service providers, with payment on a sliding scale basis. Nova Scotia is about to start such a service. Nova Scotia is also piloting a transfer service in Halifax which is provided off-site and on a sliding-scale basis. Saskatchewan also provides both supervised access and supervised exchange.

8. **Assessments and home studies**
In Newfoundland and New Brunswick, home studies or assessments are available on court order, but at least in the former, have to be paid for. In Ontario, the children's lawyer does investigation reports through social workers at a cost per investigation of $3,000 to $5,000. In Manitoba, court ordered assessment reports are prepared by staff social workers at no cost to litigants where there are custody, access or guardianship issues, but, while not generally available, the government will pay for psychological testing by psychologists where the parties have insufficient resources. In Saskatchewan, custody and access assessments can be ordered at pre-trial conferences. They are usually completed by staff social workers, though they can be done by private professionals.

PROBLEMS ARISING FROM PRESENT COURT STRUCTURE

The division of jurisdictions and powers between the Queen's Bench and the Provincial Court causes problems:

- there are cases in which no one court can deal with all the legal problems that arise from the breakdown of a marriage or family relationship. In such cases, piecemeal solutions have to be applied.
- in other cases conflicting jurisdictions and powers, such as the Queen's Bench jurisdiction in divorce and the Provincial Court's jurisdiction in child welfare, result in conflicting orders or in one court being unable to resolve an immediate problem pending action in another.
- sometimes, proceedings involving the same question, e.g., support or custody, are commenced in the Provincial Court but have to be started over again in the Queen's Bench if a divorce proceeding is started. The ability to move from forum to forum can be used as a weapon in a dispute between spouses, and orders can be made in one court in ignorance of what has transpired in the other.
- if a Provincial Court support order is filed in the Queen's Bench for enforcement purposes it can no longer be varied by the Provincial Court.
- where unmarried parents wish to deal with support, custody or access in the Provincial Court and parentage is contested, they first have to go to the Queen's Bench for a declaration of parentage.

The submission of the Provincial Court Judges to the Task Force gives an example of the problems which may be created by divided court jurisdictions. A child, reacting to stresses within the family, is charged with shoplifting. The parents become involved in an argument over the problem and one seriously beats the other in the presence of the children, thus bringing the child welfare authorities into the picture and also bringing about a criminal charge of assault. One parent claims custody and maintenance. The other claims divorce, custody or access and division of matrimonial property. Proceedings will have to be carried on in:

- Youth Court (the child's theft charge)
- adult criminal court (the assault charge)
- Provincial Court (Family Division) (the one parent's claim for custody and maintenance and the child welfare authority's application for temporary guardianship of the children)
- in the Queen's Bench, once divorce proceedings are started (divorce, custody, access and support ancillary to divorce, and division of matrimonial property).
- Provincial Court (Family Division) or a designated justice of the peace, if a protection order under the *Protection Against Family Violence Act* would commence with the Provincial Court followed by a confirmation hearing in the Queen's Bench.

This an extreme example, but it illustrates what can happen. Although simplification of court structures could not avoid multiple proceedings entirely, it could provide one forum for the resolution of all family-law matters affecting one family.

THE PRINCIPLES ON WHICH COURTS ADMINISTERING FAMILY LAW SHOULD BE DESIGNED

Here the Task Force will identify the principles that should guide the design of the family-law court system and the characteristics that family-law courts should have.

RECOMMENDATION NO. 1

The following policies and principles should apply to the family-law court system:

- **Application of law while minimizing damage to individuals**
  Family-law courts should decide disputes according to law, but, within legal requirements, should be sensitive to minimizing the damage to individuals caused by family-law disputes, and should be supported in doing so by judges familiar with family-law problems and by appropriate court services.
- **Encouragement of alternative means of dispute resolution**
  Persons with family-law problems should be encouraged to resolve them by means other than judicial decisions, and should be supported in so doing by the courts and services provided through the courts.
- **Geographic accessibility**
  The services of family-law courts, including both judicial and other services, should be available to all Albertans within a reasonable time and distance.
- **Economic and procedural accessibility**
  Economic and procedural barriers should be kept as low as possible by the adoption of efficient court structures and simplified court procedures and by the provision of court services for the assistance of family-law litigants.

A UNIFIED FAMILY COURT?

Divided jurisdictions or a unified family court?

In the Task Force's view, the choice to be made in devising the best court structure for family law is between two kinds of court structures. The first is a system under which family-law jurisdiction is divided between two or more courts, that is, the system that exists in Alberta today. The second is a single court to exercise all family-law jurisdictions that fit appropriately within the jurisdiction of a single court.

Reasons for the establishment of a unified family court

In the Task Force's view, the division of family-law jurisdictions between the Queen's Bench and the Provincial Court is a barrier to the effective administration of justice in family-law matters. As we have noted, the division of jurisdictions results in piecemeal solutions to complex family-law problems; the movement of questions from one court to another; conflicting orders of the two courts; and imperfect information about previous legal proceedings between family-law litigants. Further, in

our view, the division of jurisdictions is a barrier to the consistent provision of court services to family-law litigants and to the consistent administration of family-law courts.

The Task Force's consultation disclosed an overall dissatisfaction with the current system for family law. Support for the establishment of a unified family court among those who responded to the Task Force's questionnaire or who made submissions to the Task Force was overwhelming, including over 80% of lawyers and well over 90% in all other categories, including participants in family-law litigation, and service providers.[2]

The establishment of one court to deal with all family-law problems is not novel. Unified family courts have been established in seven provinces (Manitoba, New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, Ontario and Saskatchewan) for at least parts of their respective provinces and with jurisdiction in most family law areas. Quebec has conferred similar jurisdiction on its Superior Court. Some of those courts have been in existence and operation long enough to show that their establishment has brought about an improvement in the administration of family law in the areas within their geographical jurisdiction.

The establishment of a unified family court in Alberta was advocated as long ago as 1978 by the Alberta Law Reform Institute, incorporating some pioneer work by Alberta lawyers, but the atmosphere of the time was not favourable. The description above of events leading to the establishment of the Task Force suggests that the time of the idea of a single law forum has now come.

For these reasons, the Task Force is of the view that, in principle, family law in Alberta should be administered by a single court with exclusive jurisdiction in family-law matters.

The Task Force proposes to use the term "unified family court" to refer to the single court. The term "single law forum" has much the same meaning and could be used instead. However, "unified family court" is a term which is generally used to refer to these courts in Canada, and the term "unified" includes the notion of one institution devoted to the delivery of both judicial services and the other services which are important for the assistance of participants in family-law legal matters and of the judges of the court.

Legal and geographical jurisdiction

It is implicit in the notion of a unified family court that it have exclusive jurisdiction in the family-law areas for which it is established. That is, legal proceedings for any family-law matter will have to be brought in the unified family court.

The unified family court should serve the whole province. As we will note below, getting from the present system of divided jurisdictions to a unified family court which can provide services throughout the province will be a challenging process and may not be possible to accomplish immediately. During the transition period it may be necessary for the existing courts to serve some parts of the province: the

[2] *Alberta Unified Family Court Task Force Public Consultation Report*, Howard Research and Instructional Systems Ltd., November 2000, pages iv and 4-6.

establishment of the unified family court should not result in any reduction of service. Many submissions to the Task Force made the point that the unified family court needs to be at least as geographically accessible as the Provincial Court.

What appropriate choice of court structure can do

It must always be borne in mind that adoption of appropriate court structures will not, by itself, result in better solutions to family-law problems. The most that appropriate court structures can do is to provide a framework within which the courts and support services can work to deliver better solutions. But if a structure can be worked out which will minimize divided and overlapping jurisdictions, non-functional movement of family-law problems from court to court, and piecemeal solutions, a good start will have been made on improving the administration of family law.

We say again that the adoption of a specific court structure will not of itself ensure that family law is properly administered in the province. In fact, the establishment of an under-resourced unified family court would lose the benefits of of both courts now involved in family law and would not achieve the benefits associated with the unified family court concept. It would be a retrograde step.

Steps will have to be taken to ensure that the unified family court will give good service to family-law litigants. These steps will involve staffing the unified family court with a sufficient number of judges with special qualifications in family law; ensuring that the administration and procedures of the unified family court are appropriate to deal with family-law problems; and ensuring that adequate services are attached to the court and effectively administered so as to give proper service to family-law litigants.

RECOMMENDATION NO. 2

To give effect to the principles set out in Recommendation No. 1, a unified family court should be established in Alberta expeditiously:

- to exercise all family-law jurisdictions and powers
- to provide essential services to people involved in family-law disputes.

STRUCTURE OF THE UNIFIED FAMILY COURT

Options

The unified court should be a specialized court. Therefore neither the Queen's Bench nor the Provincial Court as a whole can be the unified family court. The available options for the unified family court are:

(a) a separate court;

(b) a division of the Queen's Bench;

(c) a division of the Provincial Court.

Constitutional and legislative requirements

Legislative requirements

The *Divorce Act* (Canada) confers jurisdiction in divorce in Alberta on the Queen's Bench. Some other family-law jurisdictions are vested in the Queen's Bench because it is a superior court. The *Young Offenders Act* (Canada) provides that jurisdiction over youth crime is to be exercised by a "Youth Court," which, in Alberta, is the Provincial Court. Other jurisdictions are conferred on the Queen's Bench and the Provincial Court by provincial legislation.

This division of legislative powers means that all family-law jurisdictions and powers can be conferred on the unified family court only if both levels of government, federal and provincial, agree. If the unified family court is not to be the Queen's Bench or a division of the Queen's Bench, an amendment to the *Divorce Act* would be necessary. Provincial legislation is required however the unified family court is to be constituted.

The division of legislative powers does not create a constitutional barrier to the creation of a unified family court. What it does do is emphasize the need for the agreement and cooperation of the Federal and Provincial Governments in enacting or continuing the legislation necessary to confer all family-law jurisdictions on the unified family court.

Sec. 96 of the *Constitution Act* 1867

Sec. 96 of the *Constitution Act* 1867 provides that "[t]he Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick." This section has been judicially interpreted as providing that a number of important family-law court jurisdictions and powers can be exercised only by judges who are federally appointed, that is to say, a court composed of provincially-appointed judges cannot exercise those jurisdictions and powers.

The Task Force has been advised that the following family-law jurisdictions and powers cannot constitutionally be conferred on a court composed of provincially-appointed judges. These jurisdictions and powers are:

(a) divorce and annulment of marriage, including, where incidental to divorce, child custody and support, and spousal support;

(b) division of matrimonial property and constructive trusts in favour of spouses;

(c) the power to grant declarations of status;

(d) the power to grant relief by injunction, including restraining orders.

The *Protection Against Family Violence Act* gives the Provincial Court and designated justices of the peace the power to make emergency protection orders which are in the nature of restraining orders. However, these powers are very time-limited and require confirmation by a Queen's Bench order so that they are a very limited exception to the proposition that only federally-appointed judges can grant restraining orders.

It follows, in the Task Force's view, while it is possible to provide for the participation of masters or other judicial officers with limited powers in a unified family court, the judges of the court, in order that they may exercise all jurisdictions and powers in family law, must be appointed by the Governor General under sec. 96 of the *Constitution Act* 1867.

A separate court?

As noted above, one option is to establish the unified family court as a separate court which will deal only with family-law matters.

The arguments in favour of the unified family court as a separate court are as follows:

(1) A unified family court will be unlike any other court and should therefore be a separate entity.

(2) The work of the unified family court will be unlike the work of any other court and will require specialized judges.

(3) The unified family court will have both judicial and therapeutic functions and will therefore have to have attached to it specialized ancillary services that are not required for any other court.

(4) The administration of the unified family court will be different from that of other courts, particularly because of the need to administer the ancillary services.

These considerations rule out merely conferring all family-law jurisdictions and powers on a court that functions in fields other than family law. However, in the Task Force's view, the advantages of administration and (to the extent that it is thought desirable) specialization can be realized as well by a court associated with an existing court as by a separate court. On the other hand, association with an existing court will allow for flexibility in that judges can (to the extent that it is thought desirable) move to and from the unified family court to the other division of the court with which it is associated in order to meet pressing demands for service or to provide some variety in the judicial work of the unified family court judges. Further, while the unified family court should function somewhat differently from other courts, it seems better on the whole to avoid isolating it from the general judicial structures.

It is worth noting here that all seven of the unified family courts in Canada have been established as a division of an existing court, which is the provincial superior court. In Ontario, a Unified Family Court was first established as a separate court (though its judges were appointed to the District Court) but it is now a part of the Ontario Superior Court of Justice.

For these reasons, the Task Force is of the view that the unified family court should be associated with an existing court.

The Task Force notes that the Howard Consultation Report shows that well over half of those in the survey response categories "Party to court proceedings" and "not stated" who gave an opinion on the question thought that the unified family court should be a separate court. We don't know the reasons behind these responses. If the

reasons have to do with dissatisfaction with existing court procedures we think that great attention to the simplification of court procedures will help to alleviate the concerns. Regardless, we think that both considerations of principle and considerations of efficiency, when analysed on the basis of more complete information, turn the balance in favour of association of the unified family court with another court.

Options and choices

Conclusion of the majority of the Task Force

The majority of the Task Force are of the view that the unified family court should be a division of the Queen's Bench. We will give our reasons.

Available options

The only existing courts with which the unified family court could be associated are the Queen's Bench and the Provincial Court. The only practicable form of association is to make the unified family court a division of one court or the other. If the choice is the Queen's Bench, that court would be reconstituted with two divisions, one division being the unified family court and the other being a general division which would exercise all jurisdictions of the Queen's Bench other than those reserved for the unified family court. If the choice is the Provincial Court, the present Family Division would be replaced by the unified family court.

Establishment of the unified family court as a division of the Provincial Court

A brief provided to the Task Force by the Chief Judge of the Provincial Court, the Judges of the Provincial Court and the Provincial Court Judges Association lists the perceived advantages that would flow from establishing the unified family court as a division of the Provincial Court. Assistant Chief Judge Franklin regards the argument as compelling and recommends that the unified family court be a division of the Provincial Court with judges appointed federally under sec. 96 of the *Constitution Act* 1867 and presided over by a Chief Judge who would have a sec. 96 appointment as chief judge of the unified family court and a provincial appointment as chief judge of the other divisions of the Provincial Court. It is her view that the advantages listed in the brief can be better realized if the unified family court is a division of the Provincial Court.

Those perceived advantages of establishing the unified family court as a division of the Provincial Court are as follows: 75 centres served by resident and circuiting judges; close working relationships with social agencies providing services to families and children; a close working relationship with the Criminal Division and the benefits of association with that Division's specialized Judges in issues related to criminal domestic violence; 24-hour daily pager access for *Child Welfare Act* and *Protection of Children Involved in Prostitution Act* emergency matters; procedurally simplified process, including a tradition of oral evidence; extensive familiarity, experience, and sensitivity to self-represented applicants, children and adolescents; a broad base of experience dealing with highly complex medical, psychiatric and psychological issues within families and specialization in the areas of child abuse and protection,

addictions, family violence and the development of future parenting plans; an open, fully functional, year-round trial Court; and a system of case management, including pre-trial and settlement conferences, in family and child welfare matters.

In addition, it has been suggested in the Task Force discussions that additional flexibility and accessibility would be achieved, particularly during the transition period, by having the deployment of both Provincial Court judges and unified family court judges determined by a single Chief Judge whose administrative jurisdiction extends to both the Provincial Court and the unified family court.

Establishment of the unified family court as a division of the Queen's Bench

(i) Relative advantages with respect to coverage, expertise and procedures

As noted above, the majority of the members of the Task Force are of the view that the unified family court should be a division of the Queen's Bench. They believe that the perceived advantages of establishing the unified family court as a division of the Provincial Court are matters of judicial experience and attitude and court administration that can be realized by a division of the Queen's Bench and that there are additional reasons for the latter choice. The majority emphasize that what they recommend is the establishment of a unified family court which will be structured as a new court designed to achieve the objectives of family law.

The Task Force recognizes that at the present time the Provincial Court sits in some 75 centres, while the Queen's Bench sits only in some 13 centres. The number of centres at which the courts sit is something determined by the Provincial Government, which can require the unified family court to sit in as many centres as the resources allocated to the court will permit. At present, the Family Division of the Provincial Court sits only in Calgary and in the Edmonton area, while in the other centres judges of the Provincial Court as a whole provide the judicial services that can be provided by provincially-appointed judges. If the unified family court is properly resourced it will be able to sit wherever needed; if it is not, it may still be necessary to have the Provincial Court as a whole provide in other centres the more limited judicial services that can be provided by provincially-appointed judges. In the majority view, these considerations will apply whether the unified family court is a division of the Queen's Bench or a division of the Provincial Court.

Some of the perceived advantages of establishing the unified family court as a division of the Provincial Court relate to the experience and attitudes of Provincial Court judges in the use of social services and in dealing with the special problems posed by family-law disputes. In the majority view, the judges of the unified family court, wherever the court is established, will come to the work of the court with similar attitudes and will quickly obtain similar experience. Indeed, it is the expectation of the majority (though this is something that others will decide) that some or all of the existing judges of the Family Division of the Provincial Court will transfer into the unified family court and bring with them their experience and attitudes. Other judges appointed to the unified family court should be there because they will be interested in achieving the objectives of the unified family court.

Most of the rest of the perceived advantages of establishing the unified family court as a division of the Provincial Court have to do with the provision of special services and the adoption of special procedures. The majority of the Task Force are in full agreement that such things as a 24-hour daily pager access for various emergency matters, the adoption of procedurally simplified process and a high level of year-round service are imperatives for the unified family court, but it seems to the majority that they can be provided by the unified family court wherever that court is established, and that measures can be adopted to ensure that it does so.

(ii) Flexibility in the deployment of judges

The majority of the members of the Task Force are of the view that the flexibility arising from the ability of the judges of the unified family court to sit in the general division of the court and vice versa will be greater if the unified family court is a division of the Queen's Bench.

Later in this report we will discuss the possibility of judges of the unified family court sitting in the other division or divisions of the court of which it is a division, and vice versa. One reason for providing for cross-sitting is that judges of the other division or divisions can be made available to cover for the unified family court when temporary service needs cannot otherwise be met. Another reason is that the majority think it desirable that judges of the unified family court be given the opportunity of doing judicial work outside family law in order to make the position more attractive and to relieve against judicial burnout which might otherwise occur.

If the unified family court is a division of the Queen's Bench, and if the judges of each division are able to exercise all the powers of both divisions (as the majority think they should), cross-sitting will be easy and effective, as all judges of both divisions will be able, by virtue of their federal appointments, to deal with all family-law matters. If the unified family court is a division of the Provincial Court, the judges of the unified family court would be able to sit in the Provincial Court as a whole , but the Federal Government, which will pay their salaries, might have concerns about the judges regularly spending time on activities other than those of the unified family courts. Judges of the Provincial Court who are not members of the unified family court division would be able to sit in that division but would not be able to exercise the jurisdictions and powers reserved to superior courts.

(iii) Achieving federal cooperation

The unified family court cannot be established without the cooperation of the Federal Government. The majority of the Task Force are of the view that the Federal Government will appoint the judges of a family division of the Queen's Bench, subject to agreement on numbers, but are not likely to agree to appoint judges to a family division of the Provincial Court.

As we have noted above, only judges appointed by the Governor General will be able to exercise all the jurisdictions and powers of the unified family court. If, as we think to be the case, all judges of the court should be able to exercise all the jurisdictions and powers of the court, it follows that all judges will have to be

appointed by the Governor General, who will, of course, make the necessary appointments only if so advised by the Federal Cabinet and if the necessary legislation to provide the necessary salaries is enacted by Parliament. Federal cooperation is therefore necessary for the establishment and maintenance of the unified family court.

Sec. 96 of the *Constitution Act* says that "[t]he Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick." The Federal Government therefore has a constitutional duty, as well as a constitutional power, to appoint judges to the superior courts in each province, and it has always done so. It does not have any constitutional duty to appoint judges to the Provincial Court in a province and has never done so. A proposal that it appoint judges to the Provincial Court would be novel and, in the majority's view, might well lead to the rejection of the proposal. Some of the difficulty might be overcome by a provision in the Alberta legislation that a unified family court division of the Provincial Court has the status of a superior court, but that, in the majority's view, would not entirely do away with the difficulty.

The establishment of the unified family court as a division of the Queen's Bench, on the other hand, would be supported by established policies and procedures of the Federal Government. Seven provinces have established courts which are considered to be unified family courts, albeit with limited geographical jurisdiction in all but one province. All seven provinces have established their unified family courts as divisions of their respective provincial superior courts. None of them has associated its unified family court with its Provincial Court.

The Federal Government has appointed judges to all seven unified family courts. It would have no grounds on policy or principle to refuse to Alberta what it has already provided to seven other provinces, particularly as it has been active over the years in promoting the unified family court concept. The only real question for negotiation would be how many additional judges the Federal Government is willing to pay for, and it will in the majority's view, strengthen Alberta's position if the Federal Government is not able to evade that difficult question by saying that it does not appoint judges to Provincial Courts in the provinces.

The establishment of the unified family court as a division of the Provincial Court would, in the majority's view, give rise to a further difficulty. The Task Force has been advised that it is likely, on grounds of maintaining judicial independence, that a chief judge who was not appointed under sec. 96 could not be given the usual authority over a court composed of sec. 96 judges. In order to avoid this difficulty, it might be possible to have the chief judge appointed by the Federal Government as chief judge of the unified family court division and by the Provincial Government as chief judge of the other divisions of the Provincial Court, though even that arrangement might lead to a constitutional challenge on grounds of judicial independence. As sec. 100 of the *Constitution Act* requires Parliament to fix and pay the salaries of judges appointed under sec. 96, the Federal Government would be responsible for the chief judge's salary, though only part of the chief judge's work would be for the unified family court. In addition, the Chief Judge of the Provincial Court is now appointed as Chief Judge for a non-renewable term, while federal appointments are to age 75, so that the

Federal Government would see the risk every seven years of having a former chief judge who is entitled to a federal salary to age 75 with no judicial function in a sec. 96 court. Again, in the Task Force's view, including a term in the proposal with consequences of this nature would invite rejection of the whole scheme.

Conclusion

The majority of the members of the Task Force are of the view that the perceived advantages of establishing the unified family court as a division of the Provincial Court are matters of judicial experience and attitudes and court administration that can be realized by a new court associated with either the Queen's Bench or the Provincial Court. They are also of the view that association with the Queen's Bench will provide some important flexibility and will facilitate the necessary federal cooperation, particularly with respect to the appointment of the judges of the unified family court.

RECOMMENDATION NO. 3

The unified family court should be a division of the Court of Queen's Bench of Alberta.

JUDICIAL PERSONNEL OF THE UNIFIED FAMILY COURT

Appointment and qualifications of judges

Judges appointed under sec. 96 of the *Constitution Act* must be lawyers. They should therefore be characterized by integrity and professional excellence as lawyers. Judges of the unified family court will in addition have some specialized needs. These flow from the unique nature of the unified family court. The judges will be charged with arriving at solutions to family-problems that are sensitive to the needs of family-law litigants. They will also be required to understand the role of family-law services in arriving at the best solutions to family disputes. Therefore, the criteria for appointment for judges of the unified family court should include some unique criteria and should give greater emphasis to others.

In the view of the Task Force, criteria for appointment should include:

- an interest in family law and a desire to serve in the unified family court.
- common sense, patience and problem-solving skills.
- an understanding of human nature and motivations.
- community involvement.

As we have seen, judges of the unified family court must be appointed by the Governor General. The appointment process is under the control of the Federal Government. We recommend that the Federal Government adapt its appointment process to include consideration of these criteria. We also recommend that the appointment process include an interview with prospective appointees, and that the

Provincial Government be consulted about appointments to the unified family court. We recommend that the Provincial Government in the course of its negotiations with the Federal Government put forward these recommendations with a view to securing their adoption.

RECOMMENDATION NO. 4

Regard should be given to the following criteria, among others, in the appointment of the judges of the unified family court:

- interest in family law and a desire to serve in the unified family court
- common sense, patience and problem-solving skills
- an understanding of human nature and motivations
- community involvement.

A special appointment process should be adopted. It should include:

- personal interviews with prospective appointees to the unified family court
- consultation with the Provincial Government.

The Provincial Government should endeavour to obtain the agreement of the Federal Government to these recommendations.

Specialization of judges

It is the Task Force's view that the unified family court should be composed of judges who are appointed to the court and become specialized in family law. It should, however be possible for the judges to spend some of their judicial time in other areas of law in order that they may keep broader perspectives and avoid the problem of burnout due to over-concentration on the emotionally and intellectually demanding problems of family law.

In three of the seven provinces which have unified family courts (New Brunswick, Nova Scotia and Manitoba), judges are appointed to the family-law division of the superior court. In three others (Newfoundland, Saskatchewan and Prince Edward Island), judges are appointed to the superior court and assigned by the respective chief justices to the family-law division. In Ontario, judges of the Ontario Superior Court of Justice are appointed as members of the Family Court. All of the seven provinces provide for at least limited assignment of a family-division judge to another division of the court.

In the Task Force's opinion, it is preferable that judges be appointed to the proposed family division of the Queen's Bench. This will emphasize that the appointment involves a long-term commitment to family law and it will help to ensure that only judges who want to spend their judicial time on family law will be appointed. However, judges of each division should be able to exercise all the jurisdictions and powers of both divisions so as to allow for deployment of judges to deal with occasional overload in the other division and so as to allow family division judges to spend some time on other judicial work. However, it should be understood, as the Nova Scotia and Saskatchewan legislation provides, that judges of the family division

will spend a substantial majority of their judicial time in the family division, and it should also be understood that the bulk of the judicial work of the family division will be done by judges appointed to the family division. The objective is to provide a unified family court that will be fully staffed by judges devoted to the administration of family law.

RECOMMENDATION NO. 5

The Family Division of the Queen's Bench should be composed of judges devoted to the administration of family law.

Unified family court judges should be specifically appointed to the Family Division of the Queen's Bench, but the judges of both the Family Division and the general division should be able to exercise all the jurisdictions and powers of both divisions.

The bulk of the judicial work of the Family Division should be done by judges appointed to the Family Division.

The legislation establishing the Family Division should provide that the judges of the Family Division will spend a substantial majority of their judicial time in the Family Division.

THE JURISDICTIONS AND POWERS OF THE UNIFIED FAMILY COURT

Core areas of family law

Up to this point we have referred to "family law" in general terms as the law that applies to family relationships and the breakdown of family relationships. It is now necessary to consider in detail what areas of law and the disputes arising from them should be dealt with by the unified family court.

The following legal areas and disputes arising out of them, in the view of the Task Force and also in the view of most of those who gave comments to the Task Force, should be dealt with by the unified family court:

- marriage (including capacity to marry and solemnization of marriage)
- divorce and nullity of marriage
- judicial separation
- spousal support
- division of matrimonial property
- support, custody of and access to children
- enforcement of support, custody and access orders
- guardianship of children (personal)
- guardianship of children (property)
- adoption of children
- parentage of children

Protection of children under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act*

Under the *Child Welfare Act*, the Provincial Court makes orders with respect to children who are in need of protection, including orders for apprehension, confinement and temporary and permanent guardianship. Under the *Protection of Children Involved in Prostitution Act*, the Provincial Court makes orders for the apprehension and temporary confinement of children who are, or are likely to be, involved in prostitution. The need for such orders customarily arises from the breakdown of the family relationships which normally protect children.

The Task Force is of the view that the protection of children under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act* should be included in the jurisdiction of the unified family court. In response to a question in the questionnaire circulated by the task force about the inclusion of child welfare matters, a substantial majority of those who made comments agreed that child welfare should be included in the jurisdiction of the unified family court.

Young offenders

The *Young Offenders Act* (Canada) establishes a separate system for dealing with young people of 12 to 17 years who commit criminal offences. The Act:

- says that society is to be protected and young people are to bear responsibility for their actions.
- recognizes that rehabilitation of young offenders is in society's interest and that young people have special needs and should have special treatment.
- requires the establishment of Youth Courts to deal with the offences of young people on the principles set out in the Act. The Provincial Court is the designated Youth Court for Alberta. The Family and Youth Division of the Provincial Court is the Youth Court for Calgary and for the Edmonton region. The Provincial Court as a whole is the Youth Court for the rest of the province.
- gives a Youth Court powers to decide whether some charges should be dealt with in Youth Court or in adult criminal court.

The provisions under which a Youth Court may allocate some youth charges to adult criminal court are found in sec. 16 of the *Young Offenders Act*. They may be summarized as follows:

- Where a 16 or 17-year-old is charged with murder, attempted murder, manslaughter or aggravated sexual assault
  - the charge is to be tried in adult criminal court under the ordinary criminal law unless a Youth Court directs that it is to be tried in Youth Court.
  - before directing that the charge is to be tried in Youth Court, the judge must determine that the protection of the public can be reconciled with the rehabilitation of the offender.
  - the onus is on whoever applies for a direction that the charge be tried in Youth Court.

- Where a 14 to 17-year-old is charged with theft, possession of stolen goods, false pretences or any of a large number of lesser offences
  - the charge is to be tried in Youth Court unless the Youth Court, on application, determines that it should be tried in adult criminal court.
  - before directing that the charge is to be tried in adult criminal court, the judge must determine that the protection of the public cannot be reconciled with the rehabilitation of the offender.
  - the onus is on whoever applies for a direction that the charge be tried in adult criminal court.

The *Young Offenders Act* and the policies and limitations on sentencing contained in it will apply equally whether the Youth Court is the unified family court or the Provincial Court.

Much youth crime is a result of the breakdown of families and family relationships: many young offenders or their families have already been the subject of proceedings under the *Child Welfare Act* before their offences. A specialized family-law court would be a criminal court when dealing with criminal charges against young offenders, but it would bring special expertise to dealing with young people who have offended because it would be accustomed to dealing with problems arising from family breakdown. If the services attached to the unified family court were available to young offenders, and if child welfare authorities continued to be involved with young offenders, it is hoped that many more of them would be rehabilitated with consequent reduction in adult crime and criminal charges later. Exclusion of young offenders from the jurisdiction of the unified family court will mean that no one court can deal with all of the problems of a family. Some members of the Task Force find these reasons compelling.

However, other Task Force members do not believe that the unified family court should include young offender matters. It was noted that some unified family court jurisdictions did at one time include young offender matters but subsequently decided to exclude them as, in one province at least, the anticipated commonality between young offender matters and family matters did not materialize. It was also pointed out that the Task Force consultation indicated that most of those who responded did not support the inclusion of young offender matters in a unified family court. Further, the additional resourcing requirements needed to deal with young offender as well as family law matters could be problematic to the ability of the unified family court to provide broad geographical coverage and deal with its caseload in a timely manner. These issues, in the view of these members of the Task Force, could affect the viability of the unified family court.

In the result, the majority of the members of the Task Force are of the view that consideration of including young offenders in the jurisdiction of the unified family court should be deferred.

The majority's reasons for deferring consideration are as follows:

- deferral would enable a more orderly transition to a unified family court that is able to deal effectively with its caseload and provide broad geographic coverage.

- in view of the experience in Canadian unified family court jurisdictions, more time is required to study whether the benefits hoped for from including young offenders in the unified family court will occur.
- while there is at present lack of support for including young offenders in the jurisdiction of the unified family court, the present review of the *Young Offenders Act* may result in amendments that will generate greater public support for including young offenders in the unified family court's jurisdiction.

Three members of the Task Force would include young offenders in the jurisdiction of the unified family court at its inception. However, the Task Force's recommendation will be that young offenders should not be included at this time, but that the question of inclusion should be reviewed no later than two years after the establishment of the unified family court, and a decision should be made in the light of circumstances at the time of the review. In the meantime, services such as those recommended for the unified family court should be made available to young offenders, and provision should be made for the sharing of information between the Youth Court and the unified family court.

Other areas

A number of additional areas of law and family-law disputes could be included in the jurisdiction of the unified family court. In these cases, the answers are not so clear. This is reflected in the opinions of those who commented to us which were much more divided. We will discuss these individually.

Family violence

Protection and restraining orders, including orders under the *Protection Against Family Violence Act*, should, in the Task Force's view, be dealt with by the unified family court. They have preventative, protective and cooling-off functions that require the specialized expertise of the unified family court.

On the other hand, while a crime committed by one family member against another may reflect breakdown in a family relationship, the Task Force does not think that adult criminal acts should be dealt with by a specialized family court. A crime is a crime and should be dealt with by the criminal courts. Even the power to bind over to keep the peace, though it resembles a restraining order, is best left in the context of the criminal justice system.

The Task Force notes that there is a pilot project in the Provincial Court called the Calgary Domestic Violence Court Project. It is intended to enhance the safety of victims of domestic violence and to provide treatment opportunities through the integration and development of various services. Specialized services, a specialized docket court, specialized Crown Prosecutors, specialized duty counsel and probation officers and treatment services for victims, offenders and children have been created. This appears to be a worthwhile project, but is beyond the Task Force's Terms of Reference.

Dependent adults

The Task Force is of the view that the unified family court is not the place to deal with the affairs of dependent adults. Much of what is involved is the administration of the property of dependent adults. The matters of personal care that are dealt with do not flow from the breakdown of family relationships and do not fall within the special expertise of a unified family court. The Task Force recommends that dependent adult matters should not be included in the jurisdiction of the unified family court.

Mental Health Act

Under sec. 10 of the *Mental Health Act*, a judge of the Provincial Court may issue a warrant authorizing the examination and detention of a person who is suffering from a mental health disorder and is in a condition presenting or likely to present a danger to himself or others. This does not appear to the Task Force to be a problem so closely associated with the breakdown of family relationships, or so clearly within the expertise of a unified family court, that it should be within the exclusive jurisdiction of the unified family court. However, the Task Force thinks that the unified family court should have concurrent jurisdiction so that it will be able to deal with applications under the *Mental Health Act* when a judge of that court is of the opinion that it is appropriate for the court to do so.

The Task Force recommends that the unified family court have concurrent but not exclusive jurisdiction under sec. 10 of the *Mental Health Act*.

Wills and estates

The probating of wills, the determination of rights on intestacy and the administration of estates affect families. However, will and estate disputes are resolved according to legal rules relating to interpretation, ascertainment of legal capacity and the distribution of property. It does not appear to the Task Force that expertise of the unified family court will have any bearing on the resolution of will and estate disputes.

The Task Force recommends that wills and estates should not be included in the jurisdiction of the unified family court.

Family relief

The *Family Relief Act* applies when a will or the *Intestate Succession Act* does not make adequate provision for the proper maintenance of a spouse or child of a deceased person. In such a case the court can direct that adequate provision be made from the deceased person's estate.

A case can be made for including family relief applications in the jurisdiction of the unified family court: failure to make adequate provision for dependants may flow from a breakdown in a family relationship, and a family relief order adjusts the relative rights of family members (though it may also affect beneficiaries who are not family members as well). A majority of those who commented would assign family relief matters to the unified family court.

However, the Task Force is of the view that family relief matters are better left to the court which deals with wills and the administration of estates. One reason is that the administration of estates, like the resolution of family disputes, is best left to one court in order to avoid the adverse effects of divided jurisdictions. Another is that family relief orders, while they may incidentally resolve a family dispute, are based on one factor and one factor only, that is, what is proper maintenance for a spouse or child, not the preservation of family relationships or the least damaging way of managing the termination of family relationships.

The Task Force therefore recommends that family relief matters be left to the court that deals with wills and estates.

School attendance

Under sec. 9 of the *School Act*, a Provincial Court judge may make an order directing a student to comply with the directions of a school attendance officer. Under sec. 109, the Queen's Bench can use the contempt power to compel attendance and testimony at a hearing of a School Attendance Board, and under sec. 110 an order of a School Attendance Board may be filed with the Queen's Bench and then has the same effect as an order of the Queen's Bench. As truancy is likely to reflect a breakdown in family relationships or a failure of parents to cause a child to attend school, it seems appropriate that these functions be discharged by the unified family court.

RECOMMENDATION NO. 6

The unified family court should have exclusive jurisdiction in the following areas of law:

- marriage (including capacity to marry and solemnization of marriage)
- divorce and nullity of marriage
- judicial separation
- spousal support
- division of matrimonial property
- support, custody of and access to children
- enforcement of support, custody and access orders
- guardianship of children (personal)
- guardianship of children (property)
- adoption of children
- parentage of children
- child welfare
- protection and restraining orders, including orders under the *Protection Against Family Violence Act*
- protection of children under the *Child Welfare Act* and the *Protection of Children Involved in Prostitution Act*
- school attendance.

The Family Division should have concurrent jurisdiction with the Provincial Court to issue warrants for detention and examination under sec. 10 of the *Mental Health Act*.

RECOMMENDATION NO. 7

The Task Force recommends that:

- young offenders should not be included in the jurisdiction of the unified family court at this time.
- the question of including young offenders in the jurisdiction of the unified family court should be reviewed no later than two years after the establishment of the unified family court, and a decision should be made in the light of circumstances at the time of the review.
- in the meantime,
  - services such as those recommended for the unified family court should be made available to young offenders where they are relevant to the situation of young offenders.
  - provision should be made for the sharing of information between the Youth Court and the unified family court to enable both the Youth Court and the unified family court to be aware of proceedings regarding common problems where such sharing is appropriate.

RECOMMENDATION NO. 8

The following areas of law should not be included in the jurisdiction of the unified family court:

- family violence (adult criminal charges)
- dependent adults
- wills and estates
- family relief.

PROCEDURES IN THE UNIFIED FAMILY COURT

People who appear before a family-law court have legal rights and responsibilities. A family-law court must make decisions about legal rights and responsibilities. It must ascertain facts and apply law to those facts. This is true even in such emotionally charged matters as custody of children.

Courts have established procedures to get at facts and law. The procedures are designed to ensure that every party to a legal proceeding has a full opportunity to present a case and rebut the other side's case. In order to achieve that objective, court procedures tend to become complex and formal.

One reason for the increasing jurisdictions and powers that have been given to the Provincial Court has been a desire to provide simplified and less formal court procedures for legal proceedings that are not seen to require the more complex and formal procedures. This has been true in the area of family law, where many jurisdictions and powers have been conferred on the Provincial Court and the Family

Division of the Provincial Court has been established to deal with the family-law matters that are constitutionally within the control of the province and provincially-appointed judges. As well, efforts have been made in the Queen's Bench to provide easy access and simplified procedures for some family-law matters. In both courts, such things as case management and judicial dispute resolution have been adopted to reduce cost, delay and conflict. Comments made to the Task Force emphasize that more needs to be done.

It is, in the Task Force's view, imperative that court procedures in the unified family court be made more user-friendly than has been the case in the past. Experience elsewhere has shown that it is a mistake to adopt for a unified family court the rules of procedure that have been evolved for courts that deal with ordinary civil and criminal legal problems. The design and adoption of simpler and less formal procedures should be a principal objective of the establishment of a unified family court. Every effort should be made to ensure that people who appear before the unified family court are able to understand the process and are given a chance to be heard. Procedures should also be designed to minimize cost and avoid multiplicity of court proceedings, and they should be flexible enough to accommodate the needs of different participants in family-law litigation.

The Task Force recommends that the Minister establish a process under which rules of procedure will be designed to achieve these objectives for the unified family court with the benefit of input from the bench, the bar and other providers of service in the family-law system.

One point is often mentioned. It is the use of affidavit evidence in family-law matters. Provincial Court procedures are largely based on the use of oral evidence, while affidavits are more frequently used in the Queen's Bench. On the one hand, the Task Force has been told that the preparation of affidavits is expensive and time-consuming, that they often include inflammatory material that is of little use in decision-making, and that at least some participants feel that they have not been properly heard because they have not had a chance to speak. On the other hand, the Task Force has also been told that, properly designed and used, affidavits can put the essential information before the court much more quickly and efficiently with much saving in public and private cost, and that some participants actually prefer not to undergo the stress of giving formal evidence. Questions about the use of affidavit evidence should be considered in the design of the rules of procedure for the unified family court.

RECOMMENDATION NO. 9

Simplifying and reducing the formality of court practices and procedures should be a principal objective of the unified family court.

The unified family court's practices and procedures should:

- be unique to the unified family court and should not vary from place to place
- ensure timely access to the court and timely resolution of disputes
- enable everyone who appears before the court to give oral evidence where appropriate and to feel that they have had a fair hearing
- minimize cost and avoid unnecessary numbers of court proceedings

- be flexible enough to accommodate the needs of different participants in family-law litigation, including unrepresented litigants.

The Task Force recommends to the Minister that steps be taken to design rules of procedure and practice that will achieve the objectives of the unified family court, with the benefit of input from the bench, including the Queen's Bench and the Provincial Court, the bar, and other providers of services in the family-law system.

ADMINISTRATION OF THE UNIFIED FAMILY COURT

The unified family court should be provided with adequate administrative resources, including staff who understand the function of the unified family court, the kinds of issues involved, and the need to ensure that participants in family-law matters are treated with respect and given assistance in their participation. There should be one administrative official responsible for administration throughout the province.

It is the Task Force's view that the unified family court should be housed in court facilities in centres where people have access to justice generally. The judges of the unified family court should not be segregated from the judges of the general division of the Queen's Bench. It is important that the court be seen to be an integral part of the justice system. It is important for bench and bar and, we think, for the public as well, that family law be seen as an area of law that is as deserving of respect as any other area of law.

There is one matter of administration to which the Task Force would draw attention. It is the desirability of having an Associate Chief Justice for the proposed Family Law Division of the Queen's Bench. Assignments and many other administrative matters should be dealt with within the Division, and an Associate Chief Justice would be able to represent the views of the Division where required.

RECOMMENDATION NO. 10

The unified family court should:

- be adequately staffed with personnel trained to facilitate the objectives of the unified family court.
- have one official who is responsible for the administration of the court throughout the province.
- share court facilities in centres where people have access to justice generally.

The unified family court should be headed by an Associate Chief Justice of the Family Division.

TECHNOLOGICAL SUPPORT FOR THE UNIFIED FAMILY COURT

It is of great importance that the unified family court be provided with adequate technological support for the following reasons:

- A common database should be available to family-law and youth courts. The courts now suffer from not having specific relevant information about other court proceedings involving an individual who is before them. Information about child welfare matters may be highly relevant to a custody dispute or to the sentencing of a young offender, and vice versa. Information about criminal charges may be highly relevant to a restraining-order application and vice versa. Without the necessary information one court may make an order in ignorance of other orders about the same subject involving the same individual. The legislation should be reviewed to ensure that information can be shared where sharing would be appropriate.
- Family-law courts should have a capacity for gathering statistical information for use in planning court resources and operations. That kind of information is not now available: for example, much of the information needed by the Task Force had to be assembled manually by various court offices and staff.
- Family-law courts should be able to conduct video hearings in order to cut down the financial and time costs of litigants and their lawyers.
- Family-law courts and staff should be able to meet by video conference in order to cut travel costs and save time.

RECOMMENDATION NO. 11

Family-law and youth courts should be provided with one computer system, or compatible computer systems, that will:

- allow the sharing of information about individuals involved in family-law or young offenders matters before the courts.
- allow the courts to collect common statistical information for use in the planning of court resources and operations.

The legislation should be reviewed to ensure that relevant information can be shared by the courts where appropriate.

RECOMMENDATION NO. 12

The unified family court should have video-hearing and video-conferencing capability to reduce costs and travel time for litigants, their lawyers, judges and court staff.

FAMILY-LAW SERVICES

Court-imposed solutions to family problems should be the last resort. Families should be given up-front advice and help to enable them to arrive at their own solutions to their problems. Families should be given advice and information so that they will understand how to minimize the effects of relationship breakdowns on children. Failing agreed solutions, families should be given information, advice and, where necessary, legal representation, to enable them to work their way through the court system.

Special attention should be given to the unique position of children in family-law problems. Specific services should be provided for the benefit of children to ensure that the family-law system will in fact advance their best interests.

As has been noted earlier in this report, a considerable number of services are now provided to persons who come to family-law courts. However, these need to be consolidated, rationalized and made generally available.

The following categories of services should be available to persons who come to family-law courts: education of parents and children; services relating to access to the courts; services relating to assistance to the court; services relating to facilitating access to children; legal services; and alternative dispute resolution. Special counselling services should be made available to children, and children should have legal representation where necessary. The unified family court should provide for judicial education in family-law matters. These categories will be detailed in the recommendation which follows.

There are some considerations to be borne in mind:

- services should be made available at the earliest possible moment so that participants in family-law proceedings will work from a solid information base and understanding of what is involved, and to minimize the formation of confrontational mindsets.
- it is the Government's responsibility to ensure that the services are available and to provide the core services. However, other forms of service delivery may be suitable in some cases, and community groups should be encouraged to take part in the provision of family-law services.

RECOMMENDATION NO. 13

The following categories of services should be available as early as possible to persons who come to family-law courts:

1. **Education of parents**
   - courses of instruction to parents for working out custody and access matters in an amicable manner, such as the existing Parenting After Separation and Communication in Conflict courses, should be continued and made more generally available
   - courses for parents in high conflict situations.

2. **Services relating to access to courts**
   - one-stop administrative centres which will provide information about the court and procedures, assistance with documents, and plain-language self-help materials and forms, and will guide litigants through court procedures
   - native counselling services
   - court-generated orders
   - interpreter services
   - judicial officers other than judges, who would be able to deal with matters that do not have to be dealt with by judges, thus providing for quicker and easier access to the courts when required.
3. **Special services for the benefit of children**
   - courses or counselling for children involved in the breakdown of family relationships
   - legal counsel for children involved in family breakdown
   - services to deal quickly with allegations of abuse and alienation in situations of breakdown of parental relations.
4. **Services that facilitate access to children**
   - access supervision
   - access exchange facilities.
5. **Assistance for the court**
   - custody and access reports.
6. **Legal services**
   - expanded access to legal aid for litigants
   - duty counsel.
7. **Alternative dispute resolution**
   - mediation services
   - case management and judicial dispute resolution.
8. **Judicial education**

   This should include courses for judges about the effects of such things as:
   - cultural diversity, social context education
   - mental health
   - substance abuse
   - dynamics of family violence
   - health issues, such as fetal alcohol syndrome.

REFORM OF FAMILY LAW

Alberta law relating to family matters is spread through many statutes. Some of them are inconsistent. Some provisions are unsuitable. It was pointed out to the Task Force that the rationalization and consolidation of family-law statutes is urgent and important. The Task Force agrees with this.

It has also been suggested to the Task Force that the rationalization and consolidation should be completed before a unified family court is established. The present process, which was commenced with the issue of discussion papers by the Alberta Law Reform Institute in October 1998 and is being continued by a committee struck for that purpose, is targeted for completion by 2002. However, the reform of such a broad area of the law is difficult and time-consuming and, where such intimate and emotional factors are involved, there is always a risk that it will not be achieved or that it will be significantly delayed. The Task Force does not think that the problems created by the present divided court jurisdictions and patchwork of services should be left unaddressed until the reform of the whole of the substantive family law is effected. The establishment of a unified family court will be beneficial whatever the state of substantive family law may be at the time of the establishment of the court.

The Task Force does strongly recommend that the reform of family law be pursued vigorously and carried to as early a completion as possible.

RECOMMENDATION NO. 14

The reform of family law should be pursued vigorously and carried to as early a completion as possible.

IMPLEMENTATION AND TRANSITION

The goal is the establishment of a unified family court which will be able to deliver the necessary judicial and associated services throughout the province. The achievement of that goal is a massive political and administrative challenge. Providing the necessary resources, including the appointment of the necessary judges, is a political challenge. Establishing a new court structure and extending family-law services throughout the province while avoiding confusion and administrative failures in the process are administrative challenges.

It is imperative that the changeover be made in an orderly manner so that family-law litigants and their families will not suffer from it. We urge the Minister to ensure that careful planning is undertaken for the implementation of the unified family court. At the appropriate stage a comprehensive and detailed business plan should be prepared after consultation with a steering committee composed of members of the bench, both Queen's Bench and Provincial Court, the bar, other service providers and the public. The business plan should include a plan for the judicial and other resources needed for the court and a timed plan for the orderly implementation of the Task Force's proposals, whether in a staged progression or as one operation. It should not lose sight of the goal of establishing a unified family court which will serve the whole province. We urge the Minister to act expeditiously to establish the unified family court.

A major concern will be obtaining federal cooperation through the appointment of the necessary judges to the unified family court. The required number will be significant. Although in the long run the establishment of a unified family court should not require more judges in total than are required by the two existing courts for family-law matters, there are transitional problems to be solved. Unless a substantial number of Queen's Bench judges move into the Family Division, more judges in total will be required during the transitional period. The same may be true in the Provincial Court, but history in the other provinces with unified family courts suggests that a substantial number of Provincial Court judges may be expected to move into the unified family court.

What is clear is that the establishment of a unified family court will result in the Federal Government becoming responsible for the salaries and benefits of a substantially greater number of judges. A principal difficulty in the establishment and extension of unified family courts in the other provinces has been that the Federal Government does not provide enough judges. Finding ways of persuading the Federal Government to participate to the necessary extent will be a major challenge. The preparation of a practical and detailed business plan substantiating the need for judicial resources in order to provide a service of a kind that the Federal Government has long advocated will be an essential element in the process of persuasion.

If a transitional period is necessary, services should, to the extent possible, be made available throughout the province, including making them available through the Provincial Court while it continues to have family-law jurisdictions.

RECOMMENDATION NO. 15

It is imperative that the changeover to the unified family court be made in a planned and orderly manner so that family-law litigants and their families will not suffer from inadequate court organization or inadequate resources.

We urge the Minister to ensure that careful planning is undertaken for the expeditious implementation of the unified family court. At the appropriate stage a comprehensive and detailed business plan should be prepared after consultation with a steering committee composed of members of the bench, both Queen's Bench and Provincial Court, the bar, other service providers and the public, which could assist in the implementation process.

The business plan:

- should include a plan for the judicial and other resources required and should provide a timed plan for the orderly implementation of the Task Force's proposals, whether in a staged progression or as one operation.
- should be designed to achieve the goal of establishing a unified family court which will serve the whole province.

AVOIDING AN INADEQUATELY RESOURCED UNIFIED FAMILY COURT

As this report has made clear, the Task Force is strongly in favour of the establishment of a unified family court in Alberta. But that is only if the unified family court is provided with the judicial, administrative and family-service resources that it needs to provide the judicial, administrative and family services which will enable families to resolve their disputes with the least possible damage to parents and children.

The Task Force strongly urges the Provincial Government not to establish a unified family court unless it is prepared to commit the necessary financial and administrative resources, and unless the Federal Government is prepared to commit the necessary judicial resources, which are necessary to enable the court to do its work. The one result that must not be allowed to happen is the substitution for the present family-law court system of a new family-court system which fails for lack of resources.

In recent years, provinces which establish unified family courts have been required by the Federal Government, as a condition of obtaining federal judicial appointments, to agree to put into services for their unified family courts the money saved by the provinces because the Federal Government will pay the judicial salaries and benefits. The Task Force makes its recommendations for the establishment of a unified family court recognizing that the cost to the province may exceed the amount of judicial salaries saved by the province. The Task Force does so because the unified family court will better serve the public.

RECOMMENDATION NO. 16

The Provincial Government should not establish a unified family court unless:

- the Provincial Government is prepared to commit to the unified family court the financial and administrative resources,
- and unless the Federal Government is prepared to commit the necessary judicial resources,

which are necessary in order to enable the unified family court to do an effective job for Albertans who have family-law problems.

REVIEWS OF RESOURCES, PRACTICES AND PROCEDURES

The operation of the unified family court and its effectiveness in meeting the needs of family-law litigants and their families should be reviewed on a regular basis to see whether changes should be made in its jurisdictions, practices and procedures and resources. The reviews should also consider whether the number of judges continues to be adequate. Some measures taken at the beginning are likely to prove to be less than perfect, and the unified family court should respond to changing times and needs.

RECOMMENDATION NO. 17

Regular reviews of the jurisdictions, practices, procedures and resources of the unified family court should be carried out to see that the court continues to meet the needs of family-law litigants and their families.

CONCLUSION

The establishment of an adequately-resourced unified family court composed of specialized judges and including services for the assistance and education of parents and children, for alternative methods of resolving family disputes and for assistance in going through the court process will enable many families to resolve their disputes with the least possible damage to parents and children

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Alberta Unified Family Court Task Force
Public Consultation Final Report

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Executive Summary

This report includes the results of a public consultation regarding the structure of family courts in Alberta and services related to family law proceedings. The consultation was commissioned by the Unified Family Court Task Force and conducted in cooperation with Alberta Justice. A structured questionnaire was available in both print-based and electronic formats, and unstructured submissions were solicited from interested groups and individuals.

Total Responses

A total of 436 completed surveys (158 electronic and 277 print-based) and 56 submissions were reviewed for this report. Participants included lawyers and non-lawyer service providers (together accounting for 30% of survey responses and 56% of submissions) as well as members of the public and other interested individuals and groups.

Support for Unified Family Court

The prevailing theme in both survey responses as well as submissions was one of support for the concept of a Unified Family Court. There was also an overall dissatisfaction with the current system for family law, both at Provincial Court and the Court of Queen's Bench levels. Despite overall low satisfaction ratings, many positive elements of the current system were noted. Mediation was the most frequently reported positive aspect of the current system.

Structure of a Unified Family Court

The most common suggestion regarding the structure of a Unified Family Court was that it should be a separate court. The majority of lawyers, however, preferred that a Unified Family Court be a division of the Court of the Queen's Bench. There was a preference for a flexible court structure and a specialized judiciary. Many respondents also emphasized the need to properly fund a Unified Family Court should it be introduced, as well as the need to revise legislation.

Jurisdiction of a Unified Family Court

The majority of participants expressed that a Unified Family Court should have broad jurisdiction covering a variety of family-related matters. Issues that were thought to fall outside this jurisdiction included young offenders, family violence, dependent adults, and mental health.

Support Services

Alternate dispute resolution/mediation was the most commonly endorsed support service for adults. Counseling and information sessions were most supported for children. Mental health services were the least supported option for both adults and children. The majority of respondents reported that support services (both legal and social) should be a major component of a Unified Family Court.

Introduction

The Unified Family Court Task Force commissioned a public consultation to assist with their mandate to make recommendations to the Minister of Justice and Attorney General regarding the structure of family courts in Alberta and services related to family law proceedings.

In cooperation with Alberta Justice, the Task Force developed a questionnaire and requested formal submissions to gather information about

- existing levels of support for a Unified Family Court,
- how such a court might be structured,
- satisfaction with the current family law system and available services, and
- potential improvements.

The questionnaire was available electronically (via the Alberta Justice website) as well as in print-based format. Large advertisements were published in the province's major newspapers to request formal submissions regarding a Unified Family Court. Members of the public as well as several interested groups were invited to make formal presentations to the Task Force throughout a series of meetings held across the province.

Results

Total Responses

A total of 436 completed surveys (158 electronic and 277 print-based) and 56 formal submissions[1] were reviewed for this report. Participants included lawyers and non-lawyer service providers (together accounting for 30% of survey responses and 56% of submissions) as well as members of the public and other interested individuals and groups.

The individuals and groups that completed questionnaires and/or formal submissions represent a **self-selected population**. That is, no attempt was made to **randomly** select respondents from the general population or from the population of those affected by the family law system. However, participants represented a wide variety of interests, including lawyers, non-lawyer service providers, members of the public, judges, and many other groups. See Table 1 for an overview of responses by stakeholder group.

Table 1. Total Responses by Stakeholder Group

Stakeholder Group	Surveys		Submissions	
	n	%	n	%
Lawyers (or legal perspective)	110	25%	16	29%
Non-lawyer service providers (or agencies)	22	5%	15	27%
Party to court proceedings (or citizens)	172	40%	22	39%
Other (e.g., clerks, investigators, government representatives)	108	25%	3	5%
Not stated	24	5%	0	0%
TOTAL	**436**	**100%**	**56**	**100%**

[1] Note that the Task Force count for submissions was 75; however, many of these documents were included as attachments to surveys in the survey analysis count. Also note that 1 submission and 4 surveys were received after the preparation of the Interim Report. In addition, one entry was identified as a duplicate and deleted. Total counts and percentages were then recalculated. These minor changes did not change the overall results or themes arising from the initial analyses.

Key Findings Overall

The prevailing theme in both survey responses as well as submissions was one of **support for the concept of a Unified Family Court**. There was also an overall dissatisfaction with the current court system, both at Provincial Court and the Court of Queen's Bench levels. Average satisfaction ratings (based on the survey) were lowest among members of the public and highest among practicing lawyers, although average satisfaction ratings overall tended to be lower than 3.0 on a five-point scale.[2] Positive elements of the current delivery system were also noted, with "mediation services" mentioned most frequently.

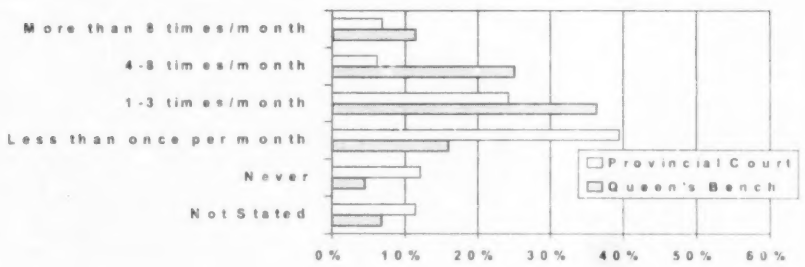
Survey Results

Key information obtained from survey responses is presented below.

Experience with Court System

The majority of survey respondents appeared primarily in Queen's Bench (44%) or both Queen's Bench and Provincial Court (25%). The remainder appeared in Provincial Court only (16%) or did not specify where they had appeared, if anywhere (16%). The majority of lawyers and non-lawyer service providers appeared before Provincial Court on family matters either less than once per month (39%) or 1 to 3 times per month (24%). In comparison, most lawyers and service providers appeared before Queen's Bench on family matters 1 to 3 times per month (36%) or 4 to 8 times per month (25%) (see Figure 1).[3] The majority of respondents who identified themselves as members of the public (i.e., party to court proceedings) indicated that they were represented in court by a lawyer (70%) or by themselves (20%).

Figure 1. Frequency of Appearance



[2] Satisfaction was measured on a scale of 1 to 5 where 1 represented "very dissatisfied" and 5 represented "very satisfied."

[3] The data for this specific question differ somewhat from those presented in the interim report which included **all** survey respondents. The revised calculations for "frequency of appearance on family matters" includes only lawyers and non-lawyer service providers.

Satisfaction with Existing System

The overall satisfaction ratings with the current family law system were low for both the Provincial Court and the Court of Queen's Bench. Overall satisfaction ratings are presented in Figures 2 and 3 below.[4] Lower scores represent lower satisfaction ratings (1 = very dissatisfied; 5 = very satisfied).

Figure 2. Average Satisfaction Ratings: Provincial Court

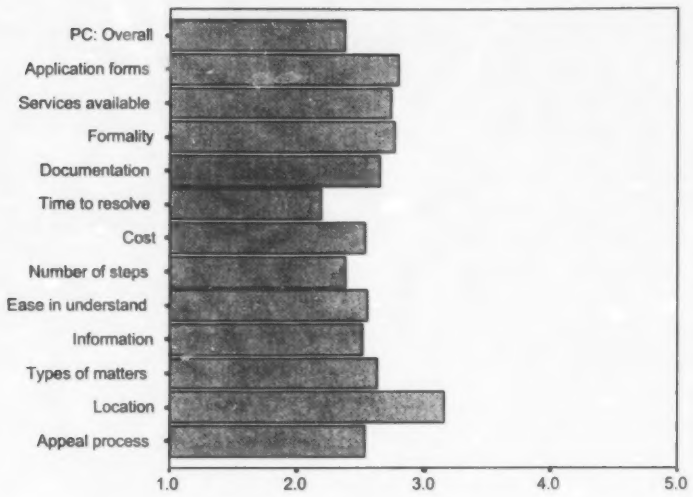
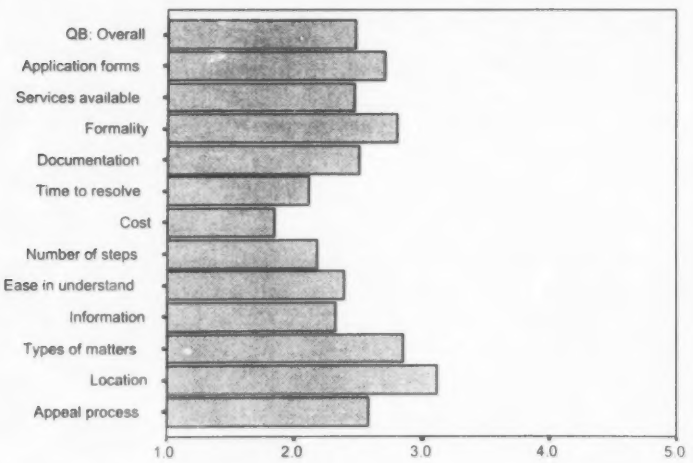


Figure 3. Average Satisfaction Ratings: Queen's Bench



[4] More detailed information regarding satisfaction ratings was provided in the interim report.

Suggestions to Improve the Court Process

The most commonly suggested changes to improve the court process in each court were as follows:

Provincial Court

- Provide faster resolution and enforce stricter timeframes,
- Ensure consistency (e.g., between judges, clerks), and
- Provide better information and assistance overall.

Court of Queen's Bench

- Simplify process and rules,
- Provide quicker access and resolution,
- Reduce costs associated with accessing Queen's Bench, and
- Ensure that justices are interested in and trained in family law.

Support for Unified Family Court

The majority of survey respondents felt that family law matters should be heard by specialized judges (88%) and supported the concept of a Unified Family Court (85%). Support varied slightly by stakeholder group (see Figures 4 and 5 below).

Figure 4. Support for Specialized Judges

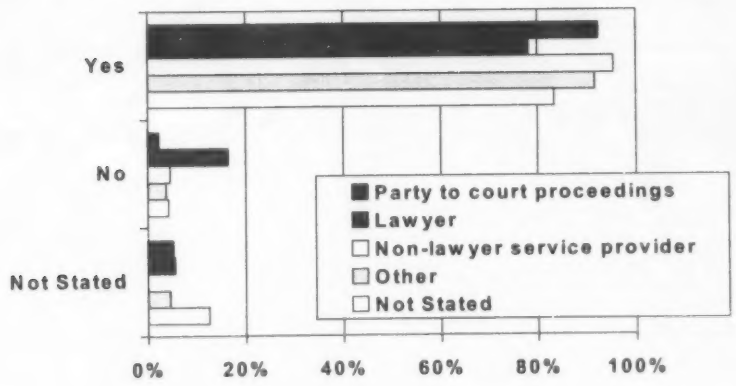
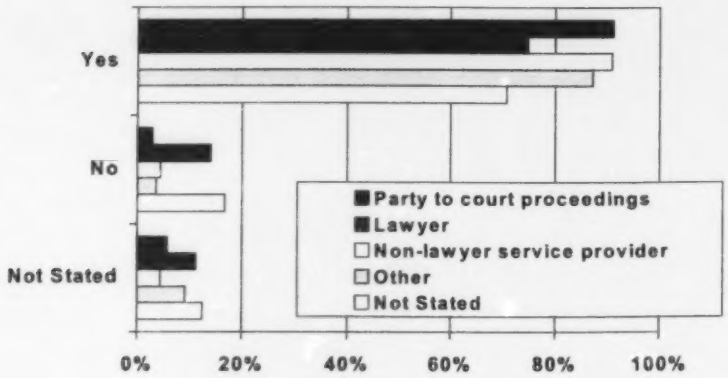


Figure 5. Support for Single Family Court



Further Explanations

Survey respondents were asked to explain why they supported or did not support the concept of a Single Family Court. The most common reasons among those who supported the concept were that the Court would lead to

- a deeper understanding of issues and a greater respect for the family,
- less confusion and the Court will be easier to understand,
- increased consistency and predictability,
- increased efficiency and quicker resolutions,
- reduced cost, and
- reduced overlap (e.g., fewer competing applications).

The most common reasons among those that did not support the concept of a Single Family Court included

- concern regarding the potential for bias, as well as burn-out among judges and other professionals that practiced exclusively in the area of family law, and
- impracticality within jurisdictional issues (e.g., federal versus provincial jurisdictions and existing legislation).

Structure of a Unified Family Court

The most common suggestion regarding the structure of a Unified Family Court was that it should be a separate court. The majority of lawyers, however, preferred that a Unified Family Court be a division of the Court of Queen's Bench. Members of the public, for the most part, were unable to provide specific suggestions regarding structure.

Open-ended comments regarding structure were grouped according to the general categories presented in Table 2. More detailed and practical suggestions have been categorized and included in Appendix A.

Table 2 . Suggestions Regarding Structure of a Unified Family Court

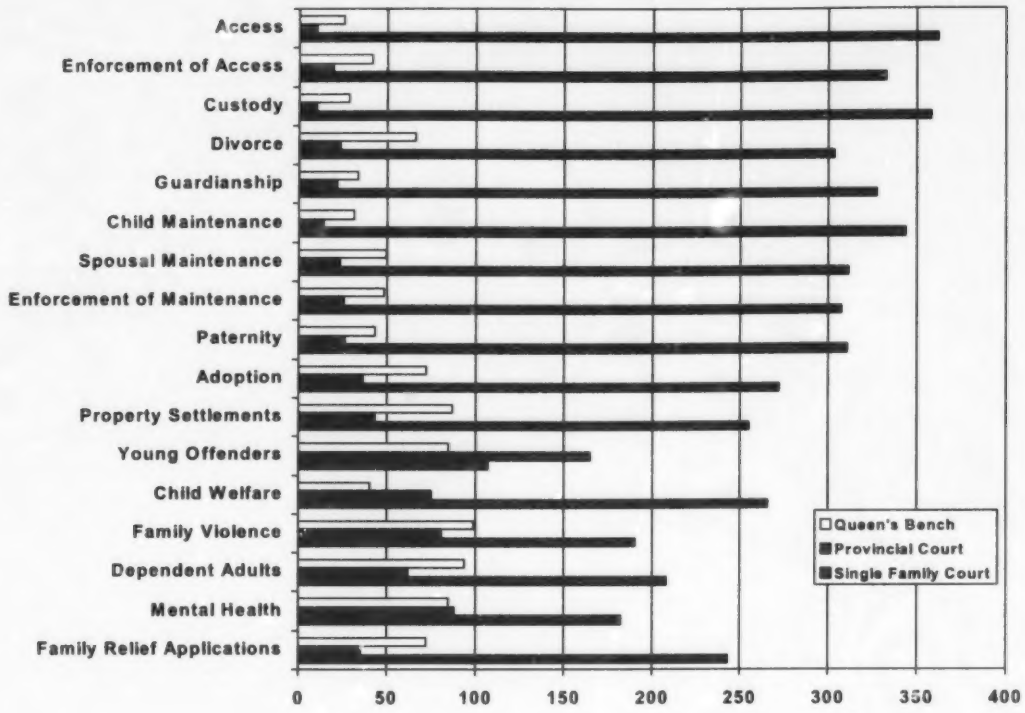
Response Category	Stakeholder Group				
	Party to court proceedings	*Lawyers*	*Non-lawyer service providers*	*Other*	*Not stated*
Separate court	89	24	8	43	8
Division of Provincial Court (PC)	3	2	1	4	1
Division of Queen's Bench (QB)	9	34	1	8	2
Division of **both** PC/QB	0	6	0	0	1
It should **not** be a separate court	0	6	1	1	1
With existing	10	4	3	11	1
Either way (separate or existing)	8	7	1	4	2
Surrogate Court	0	1	0	0	0
Supreme Court	0	0	0	1	0
Not in the court system at all	2	0	0	0	0
Other comments	11	8	2	9	0
Not stated	40	18	5	27	8
Total	**172**	**110**	**22**	**108**	**24**

Preferred Court for Specified Family Law Matters

Survey respondents felt that most of 17 specified family law matters should be dealt with by a single family court, with the exception of young offenders, family violence, dependent adults, and mental health (see Figure 6). The most common reasons for excluding certain matters include

- young offenders and family violence are criminal matters and belong in criminal court,
- mental health is more than a family law matter (e.g., social service agencies should be involved more than the court system),
- dependent adult matters belong in Surrogate Court.

Figure 6. Preferred Court for Family Matters



Support Services

Alternate dispute resolution/mediation was the most commonly endorsed support service for adults (Figure 7). Counseling and information sessions were most supported for children (Figure 8). Mental health services were the least supported option for both adults and children.

Figure 7. Support Services for Adults

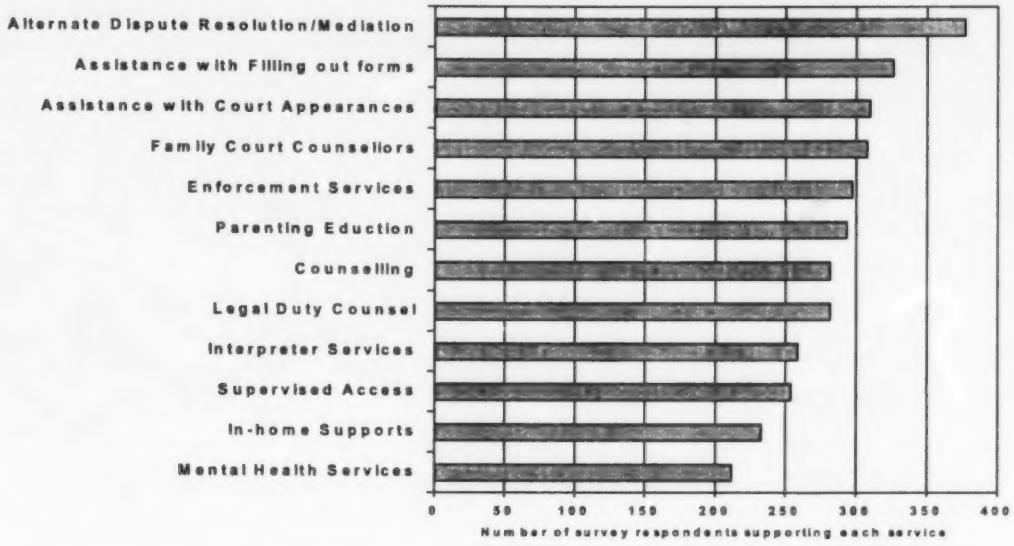
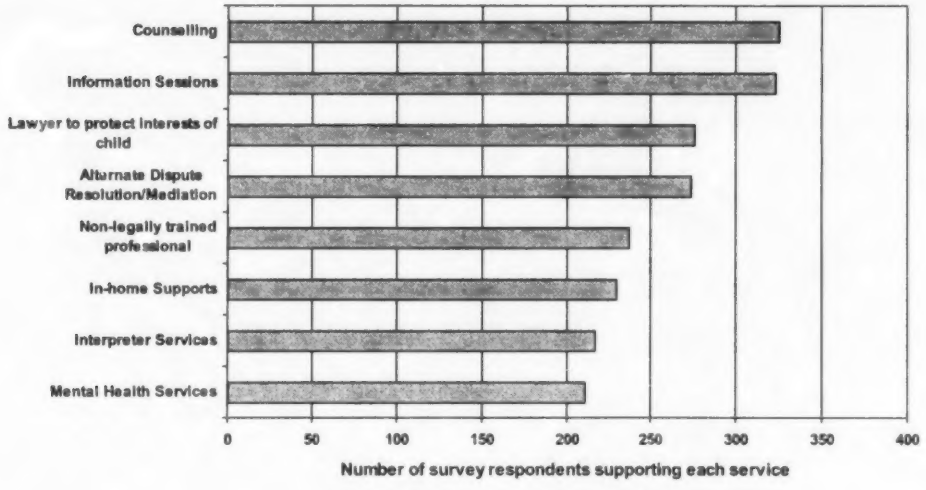


Figure 8. Support Services for Children



Satisfaction with Existing Service Delivery

Despite low overall satisfaction ratings with the existing system, many positive aspects of the current service delivery system were noted. Open-ended comments were grouped according to broad level categories (see

Appendix B for more detail). The most commonly reported positive aspects of existing court services included

- Mediation services and Judicial Dispute Resolution (JDR),
- Parenting After Separation seminars,
- Relatively good accessibility to the court system,
- Helpful clerks/staff,
- Open-minded judges and justices,
- Overall level of professionalism, and
- Native counseling services.

A large proportion of survey respondents (60%), however, did not respond to this question, and an additional 6% emphasized that there was "nothing positive" about the current system.

Suggested Improvements to Services

The most commonly suggested improvements to court services included

- provide more alternative solutions (e.g., mediation, out-of-court solutions),
- facilitate shorter wait times and provide quicker resolution of matters,
- implement more "child-centred" approaches and services,
- consistently enforce court orders.

Formal Submissions

Fifty-six formal submissions were reviewed for this section of the report. Submissions were grouped by the respondents' affiliation (e.g., citizen, agency, or legal). A framework was developed from which to analyze the content of the submissions. It included the following broad categories:

- identified problems with the current family law system,
- satisfaction with the consultation process,
- support for a Unified Family Court,
- practical suggestions regarding structure of a Unified Family Court,
- characteristics and values of a Unified Family Court, and
- identified issues and cautions.

It is our understanding that Task Force members have received a copy of the individual submissions. The general overview presented here is intended to synthesize the key elements of the submissions.

Identified Problems With the Current Family Law System

The submissions included many examples of challenges inherent in the current family law system. The most commonly cited problems included

- overlap and confusion in the dual court system (i.e., Provincial Court and the Court of Queen's Bench dealing with similar family law matters),
- long delays to process and resolve family matters,
- lack of Child Advocates,
- a Maintenance Enforcement Program that is perceived as discriminatory (i.e., negatively biased against non-custodial parents and men), and
- lack of access to courts in rural areas.

Satisfaction with the Consultation Process

The majority of individuals and groups who prepared submissions for the Task Force expressed satisfaction with the opportunity to be involved in the process. A few participants expressed dissatisfaction with the short timelines and timing during the summer months.

Support for a Unified Family Court

Not all submissions explicitly addressed level of support for a Unified Family Court, nor offered specific details or suggestions regarding how such a court might be structured. For example, the citizen perspective predominantly reflected personal accounts of unfavourable personal experiences and dissatisfaction with the current system. The perspective of legal professionals, however, focused more specifically on the logistics of how a Unified Family Court might operate, where it would be located, and what types of matters it would handle. The majority of legal professionals were supportive of the concept of a Unified Family Court, although several specific suggestions and cautions were offered (see Table 3). Similarly, the majority of submissions from agencies supported the notion of a Unified Family Court, and focussed more specifically on the potential impacts the court system on specific populations and target groups (e.g., child welfare and family violence cases).

Specific Suggestions Regarding Structure

1. Jurisdiction should be broad (with the exception of young offenders and family violence).
2. The court would require *parens patriae* jurisdiction.
3. The court would require Section 96 judges.
4. There is preference for a specialized judiciary.
5. The court structure should be flexible (recognizing unique needs).
6. Support services (both legal and social) should be a major component of the court.
7. There must be commitment to properly fund a Unified Family Court (e.g., increasing court wait times).
8. Legislation must be revised **first.**

Characteristics and Values of a Unified Family Court

While not all participants were able to comment specifically on how a Unified Family Court would function, there were common themes regarding its characteristics and values. A Unified Family Court should have the following characteristics and values:

- Accessibility
- Multidisciplinary
- Holistic
- Timeliness
- Variety of services
- Transparent and accountable
- Informal, simple, and user-friendly (e.g., plain language)
- Non-duplicative
- Consistency, uniformity
- Child-centred
- Gender neutral
- Equitable (custodial/non-custodial parents)
- Preventative (versus reactive)
- Conciliatory (versus litigious)
- Respectful and inclusive

Identified Issues and Cautions

Several issues and cautions addressed in the submissions included

- the need for ongoing training of legal professionals;
- concern regarding the decriminalization of family violence, as well as young offenders, if these issues are moved from a criminal court to a Unified Family Court;
- differing perspectives and potential outcomes regarding structure and location of the court (e.g., linkages between Provincial Court and the Court of Queen's Bench, determining when courts sit, federal versus provincial jurisdiction); and
- rural accessibility.

Summary

The majority of respondents (to both the survey and submissions) identified challenges inherent in the current dual court system for family law and supported the concept of a Unified Family Court. Members of the legal profession requested further opportunities to debate the specific elements and potential structure of a Unified Family Court. Respondents were unanimous in their support for continuous improvement to the Alberta family law system.

APPENDIX B

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